

(30,369)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 410

STATE OF ARKANSAS *EX REL.* J. S. UTLEY, ATTORNEY
GENERAL OF THE STATE OF ARKANSAS, FOR THE USE
AND BENEFIT OF CRAIGHEAD COUNTY, ARKANSAS,
PLAINTIFF IN ERROR,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND
MISSOURI PACIFIC RAILROAD COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

INDEX

	Original	Print
Stipulation re transcript of record.....	1	1
Record from the chancery court of Craighead County.....	2	2
Abstract	3	2
Bill of complaint.....	4	2
Exhibit A—Complaint in the cause of The Maccabees vs. Craighead County.....	13	7
Exhibit B—Answer in the cause of The Maccabees vs. Craighead County.....	24	12
Exhibit C—Judgment in the cause of The Maccabees vs. Craighead County.....	27	13
Exhibit D—Petition for mandamus in the cause of The Maccabees vs. Craighead County.....	29	14
Exhibit E—Summons and sheriff's return in the cause of The Maccabees vs. Craighead County.....	34	16
Exhibit F—Order for mandamus in the cause of The Maccabees vs. Craighead County.....	36	18

	Original	Print
Answer of Frisco Railway.....	38	18
Exhibit A—Letter from L. J. King to Mr. Brown, Sep- tember 8, 1921.....	41	20
Exhibit B—Letter from E. W. Brown to L. J. King, September 10, 1921.....	42	21
Complaint	48	23
Answer of Missouri Pacific Railroad Co.....	48	24
Agreed stipulation of facts.....	55	27
Exhibit 1—Letter from J. L. King to Mr. Brown, Sep- tember 8, 1921.....	56	27
Exhibit 2—Letter from E. W. Brown to L. J. King, Sep- tember 10, 1921.....	57	28
Exhibit 3—Order of Arkansas Tax Commission, April 1, 1921.....	58	28
Exhibit 4—Order of Arkansas Tax Commission, March 28, 1922.....	60	29
Exhibit 5—Resolution of Arkansas Tax Commission, adopted September 18, 1922.....	62	29
Notation as to order of mandamus.....	65	31
Affidavit of L. J. King.....	65	31
Exhibit H—Letter from L. J. King to Hon. Judge Trieber, September 15, 1922.....	66	31
Exhibit B—Letter from G. B. Rose to L. G. King, Sep- tember 16, 1922.....	68	32
Testimony of Homer Howell.....	69	33
Opinion, Futrell, J.....	72	34
Decree	81	38
Petition for rehearing.....	87	41
Opinion on motion for rehearing.....	92	44
Proceedings in supreme court of Arkansas.....	95	45
Caption.....(omitted in printing) ..	95	45
Motion and order to advance.....	95	45
Order setting cause.....	96	45
Submission of cause.....	96	46
Judgment	96	46
Opinion, McCulloch, J.....	98	46
Order extending time.....	110	52
Submission of cause on petition for rehearing.....	110	52
Motion for rehearing and order overruling same.....	111	52
Clerk's certificate.....	115	54
Assignment of errors.....	116	55
Petition for and order allowing writ of error.....	122	58
Bond on writ of error.....(omitted in printing) ..	125	59
Writ of error.....	127	60
Certificate of lodgment.....	129	61
Citation and service.....(omitted in printing) ..	130	61
Return to writ of error.....	131	61

[fol. 1]

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the
State of Arkansas for the Use and Benefit of Craighead County,
Arkansas, Plaintiffs in Error,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY and MISSOURI PACIFIC
RAILROAD COMPANY, Defendants in Error

STIPULATION RE TRANSCRIPT OF RECORD

It is stipulated by and between the undersigned counsel for parties in the above entitled cause that the record to be attached to the writ of error or to any petition for writ of certiorari in the above entitled cause, shall consist of pages 1 to 96 of the printed abstract appearing in "Abstract and Brief in Behalf of Appellants," filed in the Supreme Court of Arkansas in the above entitled cause, except that the writ of mandamus shown at pages 35 and 36 be corrected after the word "assessment" in the 14th line on page 36 by adding the words: "made hereunder shall be at least double the amount of the total assessment," these words being erroneously omitted in the printed abstract, together with subsequent proceedings had in this cause in the Supreme Court of Arkansas.

State of Arkansas ex Rel. Attorney General of the State of
Arkansas for the Use and Benefit of Craighead County,
Arkansas, by J. S. Utley, Attorney General. St. Louis-
San Francisco Railway Company, by N. J. Orr, Its At-
torney. Missouri Pacific Railroad Company, by Thos. B.
Pryor, Its Attorney.

[fol. 2] IN THE CHANCERY COURT FOR THE WESTERN DISTRICT OF
CRAIGHEAD COUNTY, ARKANSAS

No. 2281

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the
State of Arkansas for the Use and Benefit of Craighead County,
Arkansas, Plaintiff,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Defendant

No. 2282

STATE OF ARKANSAS ex Rel. J. S. UTLEY, Attorney General of the
State of Arkansas for the Use and Benefit of Craighead County,
Arkansas, Plaintiff,

vs.

MISSOURI PACIFIC RAILROAD COMPANY, Defendant

Pleas before Hon. J. M. Futrell, Chancellor for the Western Dis-
trict of Craighead County, Arkansas, on the 22 Day of August,
1923

[fol. 3]

ABSTRACT

This appeal is taken from two cases consolidated below, both of
which were brought under the Corporation Overdue Tax Act of Ar-
kansas, one of the cases being against the St. Louis-San Francisco
Railway Company as defendant and the other being against the
Missouri Pacific Railroad Company as defendant. On account of
the fact that the issues involved, both of fact and of law, were the
same, the causes were consolidated below. The cases involve the
validity of a Federal court mandamus requiring the assessing
authorities to assess property at full value in Craighead County.

[fol. 4] IN CHANCERY COURT OF CRAIGHEAD COUNTY

(Caption omitted)

BILL OF COMPLAINT

Complaint Against St. Louis-San Francisco Railway Company

On July 19, 1923, complaint was filed against the above company,
which, after stating the corporate existence of the said company, and
also of the Bonnerville-Southwestern Railroad Company, and that
the Frisco was liable for the taxes of the last named company,
alleged that:

(3). On the — day of —, 19—, the Maccabees, as plaintiff,
filed their suit in the United States District Court for the Eastern
District of Arkansas, Jonesboro Division, against Craighead County,
as defendant. A true copy of said complaint, marked exhibit "A"

is attached hereto and asked to be considered as part of this complaint.

(4). On December 7, 1920, the defendant, Craighead County, filed its answer to said complaint. A true copy of said answer marked exhibit "B" is attached hereto and asked to be considered as part of this complaint.

(5). On February 17, 1921, the United States District Court for the Western Division of the Eastern District of Arkansas, to which division said cause had been removed by agreement, rendered a judgment in favor of the Maccabees against Craighead County in the sum of \$77,680. A true copy of said judgment, marked exhibit "C" is attached hereto and asked to be considered as part hereof.

[fol. 5] (6). On March 2, 1921, the Maccabees, in the name of the United States, filed their petition for mandamus against L. G. King, as assessor of Craighead County, C. R. Cordell, A. C. Martineau and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller as county judge of Craighead County, as defendants, to require the said assessing authorities to assess the taxable property on the basis of a full value assessment in order not to defeat the petitioner in the collection of its debt. A true copy of said petition, marked exhibit "D" is attached to this complaint and asked to be considered as part thereof.

(7). Summons upon said petition for mandamus was duly served upon all the parties defendant thereto. A certified copy of said summons, marked exhibit "E" is attached to this complaint and asked to be considered as part thereof.

(8). On April 7, 1921, a judgment by default was rendered on said petition for mandamus by said District Court of the United States for the Western Division of the Eastern District of Arkansas, and said court did order, consider and adjudge that a mandamus issue requiring said defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value until judgment of plaintiff should have been paid in full; and it appearing that the property in said county had theretofore been assessed at not exceeding 50% of its true value, it was ordered by the Court that said mandamus require that the total assessment made thereunder should be at least double the amount of the total assessment theretofore made. A true copy of said order of mandamus, marked exhibit "E" is attached hereto and asked to [fol. 6] be considered as part of this complaint.

(9). Said order for writ of mandamus was duly served upon the defendants in said cause.

(10). In pursuance of said mandamus the tax assessor of Craighead County assessed, for the taxing year 1921, all taxable property assessable by him at its full value for the purpose of general county taxes, instead of upon the usual basis of 50% of the said true value.

The State Tax Commission in accord with previous custom, ascertained and determined fifty per centum of the true value of the property of all public utilities, including that of the defendant, located in Craighead County, but directed the tax assessor of said county, in extending said assessment upon the tax books of the county, to extend same at full valuation, as required by the order of mandamus. That the assessor, in compliance of said direction of said Tax Commission, so extended the assessment upon the county assessment book.

(11). That the assessment against defendant railroad company for the year 1921 was as follows:

(a) Memphis Division

	50% valuation	100% valuation, Co. gen- eral purposes
Main track 26.79 miles \$24,000 per mile..	\$642,960	\$1,285,920
Side track 12.45 miles, \$3,000 per mile...	37,350	74,700
[fol. 7] Rolling stock 26.79 miles \$4,000 per mile.....	107,160	214,320
Valuation of buildings.....	22,570	45,140
Value of material and stores of every kind	6,550	13,100
	<hr/> \$816,590	<hr/> \$1,633,180

(b) Bonnaville-Southwestern Railway Company Branch or
Division

Main track, 18.69 miles \$4,000 per mile..	\$74,760	\$149,520
Side track, 1.34 miles \$3,000 per mile....	4,020	8,040
Rolling stock, 18.69 miles, \$300 per mile.	5,607	11,214
Building valuation.....	1,200	2,400
Value of materials and stores of every kind	10	20
	<hr/> \$85,597	<hr/> \$171,194

(12). That the quorum court of Craighead County, for the taxing year 1921, levied county general tax at the rate of five mills on the dollar; that county general taxes due by said defendant for the year 1921 were as follows:

(a) To county general tax of five mills on the dollar for the taxing year 1921 on \$163,180 representing full value assessment on Memphis division.....	\$8,165.90
[fol. 8] (b) To county general tax of five mills on the dollar for taxing year 1921 on \$171,194, representing full value assessment on Bonnaville-Southwestern Branch	857.97
Total taxes.....	<hr/> \$9,021.87

(13). That in the year 1922, during the regular tax collecting period for taxes of 1921, the defendant paid to the collector of revenue all taxes upon its property except the county general taxes above mentioned. That by failure to pay said taxes within the time prescribed by law a penalty of 25% has accrued thereon, and the plaintiff should recover not only said penalty, but also interest on said county taxes at 10% per annum from April 10, 1922, until payment of said amount.

(14). In pursuance of said mandamus the property of the defendant was assessed for the taxing year 1922 as follows:

(a) Memphis Division

	50% valuation	100% valuation for Co. gen- eral purposes
Main track, 26.79 miles, — per mile.....	\$616,170	\$1,232,340
Side track, 12.83 miles \$3,000 per mile...	38,490	76,980
Rolling stock, 26.79 miles, \$4,000 per mile	107,160	214,320
[fol. 9] Valuation of buildings.....	17,835	35,670
Value of materials and stores of every kind	4,200	8,400
	<hr/> \$783,855	<hr/> \$1,567,710

(b) Bonnaville-Southwestern Railroad Company Branch

	50% valuation	100% valuation for Co. gen- eral purposes
Main track, 18.69 miles \$3,000 per mile...	\$56,070	\$112,140
Side track, 1.10 miles \$3,000 per mile...	3,300	6,600
Rolling stock, 1.10 miles \$3,000 per mile.	5,607	11,214
Building valuation.....	600	1,200
Valuation of materials and stores of every kind	10	20
	<hr/> \$65,587	<hr/> \$131,174

(15). That the county quorum court for Craighead County levied for the taxing year 1922 a general county tax of five mills on the dollar. That the county general tax of five mills on the dollar for the taxing year 1922 on \$1,567,710, representing the full valuation assessment for county general purposes of the Memphis Division of the defendant, amounted to the sum of \$7,838.55. The county general tax of five mills for taxing year 1922 on \$131,174, representing full valuation assessment for county general purposes on [fol. 10] the Bonnaville-Southwestern Railway Company branch, amounted to the sum of \$655.87. Total taxes, \$9,021.87. That in 1923 the defendant, during the regular tax-collecting period of the taxes of 1922, tendered to the collector all taxes due on said property,

except said county general taxes, no part of which has been paid. That by reason of failure of said defendant to pay said taxes for the year 1922 said defendant is liable for a penalty of 25% thereon for delinquency in payment, and also for interest at 10% per annum from April 10, 1923, until paid.

(16). That defendant has claimed that said assessment so made by the Arkansas Tax Commission of its property was not legally or properly made. For said reason this suit is brought under and in pursuance of Sections 10204-10214 of Crawford & Moses Digest of the Statutes of the State of Arkansas. If the court shall decide that said assessments as thus extended, or any one of them, was not made as required by law, the court is asked to refer the assessment of said property to the members of the Arkansas State Tax Commission, or their successors, the Arkansas Railroad Commission, who are now charged with the duty of assessing the property of public utilities, for the purpose of having same reassessed. If no such valid assessment now exists or shall be made against said defendant, it will permit the defendant to escape its just and proportionate share of the county taxation, for the reason that all other taxable property in Craighead County for *the* both the years 1921 and 1922, in compliance with terms of said Federal mandamus, paid their county general tax on the basis of full value assessment as provided by mandamus from said Federal Court.

(17). That said judgments of the Federal court pleaded in this complaint, not being appealed from and standing unreversed, became and are res adjudicata as to the right, power and duty of the assessing authorities to make said assessment on the basis of full valuation of the taxable property and the binding effect of the assessments so made upon taxpayers and taxable property coming within the scope of said judgment and action of said assessing authorities. To refuse to give effect to the judgments of the Federal court so rendered would be and is contrary to the Constitution and laws of the United States in that, from the very nature of our dual form of government, the State courts must give full faith, credit and effect to all judgments of the Federal court rendered within proper exercise of its jurisdiction, and would contravene also the provision of the Constitution of the United States that the Constitution and laws of the United States which shall be made in pursuance hereof shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the laws of any State to the contrary notwithstanding.

Wherefore, plaintiff prays that the court shall determine the amount of county general taxes due by defendant to Craighead County for both the taxing years of 1921 and 1922, and that the court render judgment for the amount of said taxes, together with 25 per cent penalty provided by law, plus interest at 10 per cent per [fol. 12] annum on the several amounts of said taxes from date of delinquency until date of repayment, together with all costs of this suit. That the court decree payment thereof and render judgment therefor, and that lien for said taxes, penalty and costs be decreed

against the whole line of the defendant railroad, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, tunnels, cuts, ties, trestles and bridges, and all lands in the State belonging to such corporation; that said property be ordered sold if said judgment be not paid within a short time to be fixed by the court; that a special commissioner in chancery be appointed to make said sale; and for other proper relief as contemplated by the corporation overdue tax act and any other law.

[fol. 13] IN THE UNITED STATES COURT, EASTERN DISTRICT OF
ARKANSAS, JONESBORO, ARKANSAS

No. 6160

THE MACABEES

v.

CRAIGHEAD COUNTY

EXHIBIT "A" TO COMPLAINT

Complaint at Law

The plaintiff is a fraternal benefit society duly organized under the laws of the State of Michigan, while the defendant is a quasi-municipal corporation, created by the laws of the State of Arkansas, and a resident of this district.

On the 22d of March, 1916, the defendant county executed its certain series of warrants in the following form:

"Certificate Number 132

"United States of America

"State of Arkansas

"County of Craighead

"Funding Warrant Certificate

"This is to certify that, for value received, the county of Craighead, in the State of Arkansas, has become justly indebted to James Gould, of the City of Pine Bluff, State of Arkansas, in the sum of eighty-four thousand eight hundred and forty dollars, which it has agreed and promised to pay to said James Gould, his assigns or bearer, at the times and in the manner provided for and evidenced [fol. 14] by and upon the presentation and surrender of the warrants of said county hereto attached, and other similar warrants hereto attached the treasurer of said county has been and is duly authorized, ordered and directed to pay James Gould his assigns or bearer,

in full settlement of the respective sums evidenced by such warrants respectively, out of either the county general fund, the justice of the peace court fund, the election expense fund, the circuit court fund, as shall be specially designated in each of said warrants, respectively. In the event at any time there should, upon the presentation of any of said warrants to the county treasurer for payment, be no money to the credit of the particular fund out of which they have been made specifically payable, then any such warrant shall be payable out of any other available fund of the county and in the county treasury that shall have not have been otherwise specifically appropriated.

"It is further certified that each of said warrants hereto attached have been duly executed, issued and delivered by said county in place of other warrants for like amounts and purposes, respectively, which other warrants heretofore called in for reissue, under the provisions of sections 1174 to 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which, after thorough examination and investigation as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was in each case strictly legal and had each been duly issued and for the amounts respectively represented thereby.

[fol. 15] "It is further represented and certified, that the said county has received the full value and benefit of either labor or material to the full amounts equal to the sums of money represented by the warrants hereto attached, respectively, and that the claims represented by each of said warrants have been duly approved and they each have been duly ordered to be issued by the county court of said county. "

"It is further certified and recited, that all conditions and things required by the Constitution and laws of the State of Arkansas to exist, be done and performed precedent to the lawful issuance of the warrants hereto attached do exist, have been properly done, happened and been performed in due and regular form and time as required by law; that warrants hereto attached have been issued in strict compliance with all of the requirements of the Constitution and laws of the State of Arkansas. It is hereby represented that sufficient provision has been made and will annually be made by tax levies for the prompt payment of the warrants hereto attached and other funding warrants delivered to said James Gould, as they severally become payable, until payment in full of all of said warrants, which tax, when collected, shall be exclusively applied to the payment of said warrants as they respectively mature.

"It is further certified and recited, that this certificate and the warrants to be hereto attached have been executed pursuant to an [fol. 16] order of the county court of said county directing such execution.

"Said tax shall be exclusively applied to the payment of said warrants as they become payable and shall be accepted by said county in payment of all debts and taxes due said county.

"It is expressly provided, it having been and is hereby agreed

that each and all of the warrants attached hereto, at the election of the respective holders thereof, shall become immediately due and payable, notwithstanding the date for payment stated in said warrants, respectively, in the event any one of them shall not be promptly paid when it becomes payable, or in the event the county court shall enter an order to call in outstanding warrants, including the warrants hereto attached, to redeem, cancel, reissue, or classify the same, or for any other purpose.

"In witness whereof, the county of Craighead, in the State of Arkansas, through its county court, and by its order with open doors, has caused this certificate and said warrants to be signed in its behalf by the clerk of its county court, under the official seal of the county, attested and countersigned by the county judge, as of the 22d day of March, A. D. 1916.

"County of Craighead, State of Arkansas, by J. C. Harrison,
Clerk of the County Court of Craighead County, Arkansas.

"Attested and countersigned: R. L. Edward, County Judge of
Craighead County, Arkansas.

[fol. 17] "568. County Warrant \$30.00

"To the Treasurer of Craighead County, State of Arkansas:

"Pay to James Gould, or bearer, on August 1, 1920, or as much sooner than the date last named as the same shall become payable, pursuant to and subject to the terms and conditions of the order of the county court of said county pursuant to which this warrant has been issued, and as indicated in the funding warrant certificate to which this warrant is attached, and said county has accordingly agreed to pay the sum of thirty dollars out of the county general fund of said county, duly created for said purpose; or in event, when this warrant shall be presented for payment, no money shall be in said fund, then the same shall be paid out of any other available fund of the county in the county treasury that shall not have been otherwise specifically appropriated, which sum of money payable on this warrant shall be payable at the office of the county treasurer, in the city of Jonesboro, State of Arkansas, or, at the option of the holder thereof, at the banking house of the Mechanics and Metals National Bank, in the City and State of New York.

"This warrant, after it shall become payable, shall be receivable for all debts and taxes due said county.

"This warrant is one of an issue that has been issued in place of other warrants for like amounts and purposes, respectively, which other warrants were heretofore called in for reissue under the provisions of sections 1174 and 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which after thorough examination and [fol. 18] investigation as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was, in each case, strictly legal, and had each been duly

issued and for the amounts respectively represented by the total issue of funding warrants, of which this is one.

"Given at the city of Jonesboro, State of Arkansas, this 22d day of March, A. D. 1916.

"(Signed:) J. C. Harrison, Clerk of the County Court of Craighead County, Arkansas.

"Attested and countersigned: R. L. Edwards, County Judge of said county.

"This is to certify that the claim against the county of Craighead, Arkansas, on which this warrant is based, has been duly approved and allowed by the county court of said county, and this warrant has been duly receipted for and registered as provided by law, this 22d day of March, A. D. 1916.

"J. C. Harrison, Clerk of the County Court, Craighead County, Arkansas.

"This warrant received from Craighead County, Arkansas, and the clerk of its county court. For value received, the undersigned hereby sells and assigns the same and the proportionate part of the original warrants to fund which this and other funding warrants have been issued above referred to, represented by it, to ———, or [fol. 19] bearer, and the undersigned hereby subrogates to the assignee or bearer hereof all right, title and interest, liens and claims in law of which are now or may hereafter be secured and accruing to the undersigned by said county, and the bearer is hereby authorized to collect the same and give full receipt and acquittance thereof in the name of the undersigned.

"James Gould, Payee of said Warrant."

[fol. 20]

"Number 569

"\$500.00.

United States of America

\$500.00.

"County Warrant

"To the Treasurer of Craighead County, State of Arkansas:

"Pay to James Gould, or bearer, on August 1, 1920, or as much sooner than the date last named as the same shall become payable, pursuant to and subject to all the terms and conditions of the order of the county court of said county pursuant to which this warrant has been issued, and said county has accordingly agreed to pay the sum of five hundred dollars out of the circuit court fund of said county, duly created for said purpose; or, in the event when this warrant shall be presented for payment, no money shall be in said fund, then the same shall be paid out of any other available fund of the county in the county treasury that shall not have been otherwise specially appropriated, which sum of money shall be payable at the office of the county treasurer, in the city of Jonesboro, State

of Arkansas, or, at the option of the holder hereof, at the banking house of the Mechanics and Metals National Bank in the City and State of New York.

"This warrant, after it shall become payable, shall be receivable for all debts and taxes due said county.

"This warrant is one of an issue that have been issued in place of other warrants for like amounts and purposes, respectively, which other warrants, heretofore called for reissue, under the provisions of sections 1174 to 1179, both inclusive, of Kirby's Digest of the State of Arkansas, and which, after thorough examination and investigation as to the legality thereof, it was duly found by the county court that the indebtedness represented thereby, respectively, was in each case strictly legal, and had each been duly issued and for the amounts, respectively, represented thereby.

"Given at the city of Jonesboro, State of Arkansas, this 22d day of March, 1916.

"(Signed) By J. C. Harrison, Clerk of the County Court of Craighead County, Arkansas. By R. L. Edwards, County Judge of said County.

"This is to certify that the claim against the county of Craighead, Arkansas, on which this warrant is based, has been duly approved and allowed by the county court of said county, and this warrant has been duly receipted for and registered as provided by law, this 22d day of March, A. D. 1916.

"J. C. Harrison, Clerk of the County Court, Craighead County, Arkansas.

"This warrant received from Craighead County, Arkansas, and the clerk of its county court, for value received, the undersigned hereby sells and assigns the same and the proportionate part of the debt and contract price above referred to represented by it, to ———, or bearer, and the undersigned hereby subrogates to the assignee or bearer hereof all right, title and interest, lien and claims in [fol. 22] law, or which are now or may hereafter be secured and accruing to the undersigned by said county, and the bearer is hereby authorized to collect the same and give full receipt and acquittance thereof in the name of the undersigned.

"James Gould, Payee of said Warrant."

(Filed July 19, 1923. Sera E. Watkins, Clerk.)

[fol. 23] The plaintiff is the owner and holder, for valuable consideration, of the following warrants, of the same general tenor and effect.

Due August 1, 1917:

30 at	\$500.00.....	\$15,000.00	
134 at	30.00.....	4,020.00	
			<u>\$19,020.00</u>

Due August 1, 1918:

30 at	500.00.....	15,000.00	
104 at	30.00.....	3,120.00	
			<u>18,120.00</u>

Due August 1, 1919:

30 at	500.00.....	15,000.00	
74 at	30.00.....	2,220.00	
			<u>17,220.00</u>

Due August 1, 1920:

44 at	500.00.....	22,000.00	
44 at	30.00.....	1,320.00	
			<u>23,320.00</u>

Total.....			<u>\$77,680.00</u>
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All of said warrants are long past due, and no part thereof has been paid, though the plaintiff has often demanded payment.

The plaintiff therefore prays judgment for the amount thereof.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 24] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE JONESBORO DIVISION OF THE EASTERN DISTRICT OF ARKANSAS

THE MACABEES, Plaintiff,

v.

CRAIGHEAD COUNTY, Defendant

EXHIBIT "B" TO COMPLAINT

Answer of Defendant

The defendant, Craighead County, through its county judge, W. H. Fuller, admits that the plaintiff is a fraternal benefit society duly organized under the laws of Arkansas, and that the defendant is a quasi-municipal corporation. It admits that on March 22, 1916, through its county judge then in office, defendant executed a series of warrants in substantially the form set out in the complaint, but denies that said warrants were duly issued pursuant to any law, and alleges that the attempted issuance of warrants in the form set out, purporting to be payable at specified times as therein set out, was at the time, and now is, irregular and without authority of law, and that

the recitals in said warrants were placed therein without authority of law and are not binding upon the defendant in any respect.

Defendant alleges that each of the warrants in denominations of \$500 has attached to it another alleged warrant for the sum of \$30 [fol. 25] payable at the same time as the warrant for \$500 is due, and this defendant alleges that, regardless of the recitals in said warrants, the said warrants in denominations of \$30 represent interest upon the warrants in denominations of \$500 at the rate of 6 per cent per annum for one year, and said warrants are therefore illegal and issued contrary to the provisions of the Constitution of Arkansas, being an attempt to pay interest upon county warrants.

The defendant denies that Craighead county ever received the full value and benefit in either labor or material equal to the amount of warrants issued, and further denies that the said warrants were issued in lieu of previous county warrants for like amounts and purposes, and alleges that the alleged warrants sued upon herein exceed by approximately \$39,000 the total amount of county warrants previously issued and surrendered to the said county upon the issuance of the warrants sued upon.

The warrants sued upon herein being issued in large part of interest illegally assumed, and in large part without consideration in other warrants surrendered, and bearing upon their faces recitals not authorized by law, and payable in manner and form not authorized by law, because payable on their face out of any funds the county might have in any separate account or fund, regardless of appropriations by the quorum court for specific funds, are wholly illegal and void, and the illegalities extend throughout all the said [fol. 26] warrants, so that no recovery can be had upon any of them in this suit, and plaintiff's only rights against the county grow out of the original consideration, if any, received by the county for such original warrants as were actually surrendered upon the issuance of the warrants sued for.

Wherefore defendant prays to be discharged with costs and all other proper relief.

(Signed) Basil Baker and Lamb & Frierson, Attorneys for Defendant.

Indorsed: Filed December 7, 1920. Sid B. Redding, Clerk, by W. P. Field, D. C.

[fol. 27] UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

EXHIBIT "C" TO COMPLAINT

Be it remembered, that, at a District Court of the United States of America in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the eighteenth day of October, Anno Domini one thousand nine hundred and twenty, at

the United States court room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit on February 17, 1921:

"No. 6160

"THE MACCABEES

v.

CRAIGHEAD COUNTY

"Now on this day came the parties by their respective attorneys and file their stipulation in writing, waiving a trial by jury; and the cause being submitted to the court on oral evidence and the record of the Craighead County Court, and the court being sufficiently advised in the premises, it is considered, ordered and adjudged that the plaintiff have and recover of and from the defendant the sum of \$77,680, with all its costs herein expended.

"August 4, 1922.

On this date the sum of \$333.44 is hereby credited on this judgment. Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 28]

"August 1, 1922.

On this date the sum of \$5,666.56 is hereby credited on this judgment. Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 29]

EXHIBIT "D" TO COMPLAINT

IN THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
ARKANSAS, EASTERN DIVISION

UNITED STATES on Relation of the MACCABEES, Plaintiff,

vs.

L. G. KING, as Assessor of Craighead County; C. R. CORDELL, A. C. Martineau, and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller, as County Judge of Craighead County, Defendants

Petition for Mandamus

The county of Craighead, in the State of Arkansas, prior to the 5th day of February, 1917, for valuable consideration, duly issued its certain warrants, payable out of its general revenue fund, to the amount of \$77,680, and these warrants were acquired by the plaintiff for a like valuable consideration. The plaintiff brought suit at law upon said warrants in this honorable court, and such proceedings

were had in said cause that, on the 17th day of February, 1921, judgment was rendered in favor of the plaintiff for the total amount of said warrants, with costs, amounting to \$77,680, which judgment is still in full force, unpaid and unreversed.

Besides the county warrants issued to the relator upon said date, other warrants have been issued by said Craighead County largely in excess of its revenues, and the county taxes are paid in such warrants. [fol. 30] On account of the issuance of such other scrip by said county in excess of its revenues, and the payment of the county taxes in county scrip, it will be ineffectual to attempt to enforce the payment of said judgment by mandamus to the county levying court of said county to require it to levy a special tax on the taxable property of said county for the purpose of paying said judgment.

The defendant, L. G. King, is the duly elected, qualified and acting assessor of Craighead County, and, under the Constitution, it is his duty to assess or value for purposes of taxation all the real and personal property subject to taxation in said county, except certain property which is assessed or valued for taxation by the State Tax Commission, at its true value in money.

The defendants, C. R. Cordell, A. C. Martineau and Monroe Smith, constitute the Tax Commission of the State of Arkansas, and the said Tax Commission is vested by law with the power to raise or lower the assessment of any county in said State. Under the law, it is the duty of said Commission to assess at its true value in money the property to be assessed by it and to require the assessors of all of the counties of the State to assess the property within their jurisdiction at its true value in money. The said board has, however, failed to discharge this duty ever since its organization; and, on the contrary, it has issued to the assessing officers of the various counties [fol. 31] a request that all of the property in the State be assessed at 50% of its true value.

The relator alleges that the said assessor has failed, refused and neglected to discharge his duty, in that he has failed and neglected to assess or value for taxation and place upon the assessment books of said county a great deal of property, principally personal property, subject to taxation in said county and to assessment therein, and will, unless compelled by the mandamus of this honorable court, assess and value all the taxable property in said county at a rate not exceeding 50% of its true value.

The undervaluation of the taxable property of said county is a fraud upon the relator as a creditor thereof, and is a refusal of the said assessor and of the said Tax Commission to discharge their duties according to law.

If the taxable property of said county were assessed at its true value, as required by law, the revenues of said county, even at the low rate of taxation allowed by the laws of the State of Arkansas, would very soon be sufficient to discharge the said judgment, in addition to paying the ordinary and usual expenses of the county.

If the taxable property of said county is not assessed at its true value, as required by law, the relator will be unable to collect his said judgment against said county.

Unless required by authority of this court to discharge their duties according to law, the said assessor and the said Tax Commission will continue to undervalue the taxable property in said county subject [fol. 32] to taxation by said assessor, and thus defeat the relator in the collection of his judgment and other indebtedness of said county to him.

Under the laws of the State of Arkansas, it is the duty of the State Tax Commission to direct the county assessing officers to assess the property within their respective jurisdictions, at its full value in money, and the said assessing officers are required to obey the mandate of said Tax Commission.

In order to pay the judgment of the relator, it is necessary that a portion of the five-mill tax allowed by law — be levied by the county court of Craighead County, sitting as a levying court, be levied, making the same payable in United States currency, and payable only to the relator and to other holders of judgments against said county.

Your petitioner therefore prays for a writ of mandamus, commanding the State Tax Commission to require the said assessor and township boards of assessors to assess all property within their jurisdiction, at its true value in money; and also commanding the said assessor to assess and value for the year 1920, and for subsequent years until said judgment and all other indebtedness of said county to the relator shall have been paid, all of the taxable property of said Craighead County subject to assessment, at its full value in money, as required by law, to the end that all of the taxable property of said county, subject to assessment, be assessed at its true value.

And your petitioner further prays that the county Court of [fol. 33] Craighead County, sitting as a levying court, be required to make a levy out of its taxes for a general county purpose to the amount of two and one-half mills of the assessed value of the real property of the county, and that the amount so levied be payable only in United States money, and applied only to the payment of judgments recovered against Craighead County in this court, including the judgment of the relator.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Plaintiff.

[fol. 34]

EXHIBIT "E" TO COMPLAINT

UNITED STATES OF AMERICA, EASTERN DISTRICT OF ARKANSAS,

WESTERN DIVISION

The President of the United States to the Marshal of the Eastern District of Arkansas, Greeting:

You are hereby commanded to summon L. G. King, as assessor of Craighead County, C. R. Cordell, A. C. Martineau and Monroe Smith, as the State Tax Commission of the State of Arkansas, and

W. H. Fuller, as county judge of Craighead County, Arkansas, if they be found within your district, to appear before the Judge of our District Court of the United States in and for the Western Division of the Eastern District of Arkansas, at the United States court room in the city of Little Rock, Arkansas, within twenty days after service of this process, to answer a complaint filed against them in said court by United States, on relation of the Maccabees, and warn them that, upon their failure to answer, the complaint will be taken for confessed; and have you then and there this writ, with the manner of execution hereof indorsed hereon.

In testimony whereof, Hon. Jacob Trieber, Judge of the District Court of the United States, has caused the seal of said district court to be hereunto affixed, this 2d day of March, A. D. 1921, and in the one hundred and forty-fifth year of our independence.
[fol. 35] Attest:

Sid B. Redding, Clerk, by W. P. Field, Jr., D. C.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION

No. 6193

U. S. ex Rel. THE MACCABEES

v.

L. G. KING, as Assessor of Craighead County et al.

Summons

Issued March 2, 1921.

Returnable within twenty days after service.

Returned and filed Mar. 24, 1921.

Sid B. Redding, Clerk. Rose, Hemingway, Cantrell &
Loughborough, Plaintiff's Attorney.

In obedience to the within writ, I have summoned the within named C. R. Cordell, A. C. Martineau and Monroe Smith, as the Tax Commission of Arkansas. W. H. Fuller, 3-5-31.

L. G. King at Jonesboro, 3-7-21, as Tax Assessor and County Judge of Craighead County, by delivering into his hands a true and correct copy of the same, at Little Rock, Ark., in the Eastern District of Arkansas, this 2nd day of March, A. D. 1921.

A. J. Walls, U. S. Marshall, by D. A. Caldwell, Deputy Marshall.

[fol. 36] EXHIBIT "F" TO COMPLAINT

UNITED STATES OF AMERICA,
 Eastern District of Arkansas,
 Western Division:

Be it remembered, that at a District Court of the United States of America in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 4th day of April, Anno Domini one thousand nine hundred and twenty-one, at the United States court room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge, presiding and holding said court, the following proceedings were had, to-wit: On April 7, 1921:

No. 6193

UNITED STATES, on Relation of THE MACCABEES

vs.

L. G. KING, AS ASSESSOR OF CRAIGHEAD COUNTY; C. R. CORDELL, A. C. Martineau, and Monroe Smith, as the State Tax Commission of the State of Arkansas, and W. H. Fuller, as County Judge of Craighead County.

Order

Comes the relator by Rose, Hemingway, Cantrell & Loughborough, its attorneys, and the defendants, though duly served with process, come not; and, the court being sufficiently advised in the premises, it is ordered, considered and adjudged that a mandamus issue, requiring the defendant to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for \$77,680 and [fol. 37] costs shall have been paid in full; and it appearing that the property in said county has heretofore been assessed at not exceeding 50% of its assessed value, it is ordered that said mandamus require that the total assessment made hereunder shall be at least double the amount of the total assessment heretofore made. It is further ordered that service of a copy of this order be deemed a sufficient service of the mandamus.

[fol. 38] IN CHANCERY COURT OF CRAIGHEAD COUNTY

ANSWER OF FRISCO RAILWAY TO COMPLAINT IN CHANCERY—Filed
 Aug. 22, 1923

Omitting caption and signature of counsel, the answer of the Frisco Railway to the complaint was as follows:

Defendant, answering the complaint herein, denies each and every allegation therein contained not herein expressly admitted.

1st. Admits that it is a corporation organized under the laws of the State of Missouri.

2nd. Admits that it is the lessee of a line of railway in Craighead County, Arkansas, including the Bonnerville-Southwestern Railroad, and that it maintains and operates said roads.

3rd. Admits that the Maccabees filed a suit against Craighead County in the United States District Court as alleged, and that exhibit "A" is a copy of the complaint filed in said suit.

4th. Admits that Craighead County filed its answer to said suit and that exhibit "B" to the complaint herein is a copy of said answer.

5th. Admits that said United States District Court on February 17, 1921, rendered judgment in said cause, copy of which is marked exhibit "C" to the complaint herein.

6th. Admits that on March 2, 1921, the Maccabees applied to the said United States District Court for a writ of mandamus, copy of [fol. 39] the petition therefor is marked exhibit "D" to the complaint herein, and that said petition was against L. G. King as assessor, W. H. Fuller as county judge, and C. R. Codell, A. C. Martineau and Monroe Smith as the State Tax Commission of the State of Arkansas.

7th. As to whether the defendants last above named were duly or otherwise served with summons or other process to answer to said petition for writ of mandamus, this defendant is not informed and has not sufficient information to form a belief, and therefore denies that any of said defendants were in fact served with summons as required by law or at all, and defendant demands strict proof of the allegation of such service.

8th. Denies that judgment by default was rendered in said United States District Court, as alleged and at the time alleged, against any of the defendants mentioned in said petition, or otherwise, or at all. But defendant admits that the said United States District Court did on April 7, 1921, make an order, of which exhibit "E" is a full and complete copy. Defendant denies that any other or different order or judgment was ever rendered or entered upon said petition for writ of mandamus.

9th. Denies that the said order of which exhibit "E" is a copy was ever served upon the defendants named in said order, or petition therefor, as alleged, or at all, or at the time alleged, or in the manner [fol. 40] alleged, or otherwise or at all, and the defendant demands strict proof of such alleged service.

10th. Defendant denies that, in pursuance of said mandamus or order, or any mandamus or order of the United States District Court, the "tax assessor of Craighead County assessed for the taxing year 1921 all taxable property taxable by him at its full value for the

purpose of general county taxes instead of upon the usual basis of 50 per cent of said true value" as alleged. But the defendant alleges the facts to be that the various "township boards of assessment and valuation" of Craighead County, together with the assessor of said county, prior to April 7, 1921, the date of the order pleaded in the 8th paragraph of the complaint, had duly assessed and valued all property in Craighead County and had duly certified the result thereof to the State Tax Commission, as required by Act 147, passed and approved March 1, 1919, and said valuation and assessment was duly approved by said State Tax Commission as the basis of taxation in Craighead County for the year 1921.

Defendant, further answering paragraph 10 of the complaint, admits that the State Tax Commission fixed the value of all property, including the property of this defendant and property under its control, at 50 per centum of the true value. And defendant alleges that this was done by said Tax Commission for the purpose [fol. 41] of making the assessments of all property in all of the counties of Arkansas equal and uniform throughout the State, as required by the Constitution of the State.

But defendant denies said State Tax Commission of Arkansas, in pursuance of the order for a mandamus, or at all, directed the tax assessor of Craighead County, in extending said assessment upon the taxbooks of the county, to extend the same at full valuation. But defendant alleges that the valuation and assessment of all property in Craighead County had been completed by the various township boards of assessments and valuation together with the assessor, and this had been approved and certified to the county clerk of Craighead County before any order was ever issued by the United States District Court, as alleged, and thereafter and without authority of law or in obedience to the order of the United States District Court pleaded, the assessor on September 8, 1921, wrote a letter to the secretary of the State Tax Commission, a copy of which is attached and marked exhibit "A" to this answer and made a part hereof, in which the assessor stated:

Jonesboro, Arkansas, Sept. 8, 1921.

State Tax Commission, Little Rock, Arkansas, Mr. Brown, Sec.

DEAR SIR: In compliance with an agreement with the attorneys for the Maccabees, we assessed all property in Craighead County at 100% for county tax only. We did this by using an extra column in our assessment books.

[fol. 42] Shall I double the assessment that you sent me?

Awaiting an early reply, I am

Very respectfully, (Signed) L. J. King.
Box 250, Jonesboro, Ark.

In reply thereto the secretary of the State Tax Commission replied by letter, copy of which is hereto attached and marked exhibit "B" and made a part of this answer, in which letter the secretary of the State Tax Commission stated:

"September 10, 1921.

"Mr. L. J. King, Assessor Craighead County, Jonesbor-, Arkansas.

DEAR SIR: Referring to yours of the 8th inst. in which you state that all property in Craighead County had been assessed at one hundred per cent for county tax only, and ask if the Tax Commission's assessments should be doubled for county purposes, I have to advise that, since all property is required to bear the burden of taxation equally, I should think that the Tax Commission's assessments should be doubled for county purposes. However, since a one hundred per cent assessment for county purposes is the result of an agreement, and is not required by our tax laws, I rather think that, should any of the companies or corporations assessed by the Tax Commission object to this assessment for county purposes, it would not be sustained by the Courts.

[fol. 43] Yours very truly, Arkansas Tax Commission, (Signed)
by E. W. Brown, Secretary. SWB-MS."

Defendant alleges that, under and pursuant to these two letters, the taxbooks of Craighead County were changed by some one to this defendant unknown, and without authority, by adding a extra column to the books as already made out, in which extra column the value of this defendant's property as theretofore fixed by the various township boards of assessment and valuation, together with the assessor, and approved by and certified to the county clerk of Craighead County by the State Tax Commission, was doubled for "county general purposes." That said act was void and unauthorized by the order pleaded, or by law.

Defendant denies that said act of so doubling the valuation of its property for taxation was authorized by the order of the United States District Court, or that said court had any jurisdiction so to do, or that any State or county official was authorized by said order or the law so to do, but defendant alleges that the doubling of the value placed on its property, which was equal and uniform with the assessments of like property throughout the State, was in violation of section 5 of article 16 of the Constitution, and was and is void.

11th. Defendant admits that the valuations set out in the first column of the tabulation of the 11th paragraph of the plaintiff's [fol. 44] complaint were the valuations of the defendant's property fixed by the State Tax Commission of the State of Arkansas, and that the second column shows the valuation contained in the extra column added to the tax books as indicated in the letter to the State Tax Commission secretary and his reply thereto, and for the reasons stated in those letters, and not otherwise.

12th. Admits that the rate of taxes levied by the quorum court of Craighead County for 1921 for county general taxes was 5 mills on the dollar.

But defendant denies that the general county taxes due from it to Craighead County is or was \$9,021.87, but alleges that the true and

legal tax, based on the legal assessment and valuation fixed by the assessing officers, State and county, was and is \$4,510.93, which said last named sum this defendant tendered to the collector of Craighead County before said tax became delinquent or subject to a penalty. That the collector, acting upon legal advice, refused the tender so made solely because the amount was less than \$9,021.96 which appeared on the t-x books.

13th. Defendant denies that it is indebted to the State for the use of Craighead County in any sum in excess of \$4,510.93, or that it is liable for any penalty or interest thereon, because it has always been ready and willing to pay said sum of \$4,510.93, which it now offers to pay into court.

[fol. 45] 14th. Defendant, answering the 14th paragraph of the complaint, denies each and every allegation therein contained, and specifically denies that its main line property for taxation in Craighead County was valued at \$1,567,710 or any sum in excess of \$783,855. And alleges that the valuation of \$783,855 was and is the valuation determined and fixed by the county assessors and the State Tax Commission for the year 1922 and certified by said Commission to the county clerk of Craighead County. Defendant says that said valuation so fixed by the State Tax Commission and county officials aforesaid was illegally doubled by some one unknown to this defendant, by simply adding an extra column to the taxbooks, then already made out, and by extending the county general tax against this doubled valuation, in violation of section 5, article 16 of the State Constitution.

Defendant says the valuation of its property on the Bonnaville-Southwestern Railroad was fixed at \$65,587 by the county assessors and the Tax Commission, and doubled on the taxbooks in the same manner, in violation of section 5, article 16 of the Constitution. Admits defendant tendered to the collector the sum of \$4,247.22 in full of the general county tax, and defendant alleges that this was all that was legally due.

15th. Defendant admits that the rate fixed for general county tax by the quorum court was and is 5 mills on the dollar for the year [fol. 46] 1922, but denies such rate was legally extended against defendant's property, as alleged, or at all, but alleges that the valuation legally fixed on defendant's property in said county was illegally doubled as aforesaid.

Defendant admits that it paid all taxes due from it in Craighead County for 1922 except the general county tax, but alleges that it tendered to the collector 5 mills on the dollar on the value of its property fixed by the State Tax Commission, county assessor and township boards, but refused to pay on the double valuation shown on the taxbooks and which double valuation was made in violation of section 5, article 16 of the Constitution.

Defendant denies that the double valuation as shown on the tax books was in obedience to any order of the United States District Court as alleged, or at all, or that the said United States District

Court had any jurisdiction to order the valuation of defendant's property to be doubled as alleged, or at all.

16th. Defendant, for demurrer to the 16th paragraph of the complaint, says said paragraph does not state facts which brings this suit within the statute pleaded, and fails to state facts to entitle the plaintiff to any relief under the statute pleaded. And because the relief prayed in said paragraph cannot be granted without violating section 5, Article 16, of the Constitution of Arkansas.

17th. Defendant, for demurrer to the 17th paragraph, says that [fol. 47] said paragraph does not allege any facts to authorize the legal conclusion pleaded therein.

Defendant, answering the 17th paragraph, denies that the order of the United States District Court, of which exhibit "F" is a copy, is res adjudicata, as alleged, or binding on this defendant, for any reason alleged, or at all.

Defendant, further answering says that said order violates section 5, article 16 of the Constitution of Arkansas, and said United States District Court was without jurisdiction in that behalf, for that for the years 1921 and 1922 all property, including railroad company property in the 75 counties of the State of Arkansas, was assessed for all purposes on a basis not to exceed 50 per cent of its true value, and that said basis was approved and adopted by the State Tax Commission for all counties in Arkansas for the years 1921 and 1922 and prior years, and that said Commission never did fix any different valuation for Craighead County, and any attempt to do so by it, in obedience to the order pleaded in plaintiff's complaint, or without the same, would have been in violation of section 5, article 16, of the Constitution of this State.

Defendant denies that the plaintiff is entitled to the relief prayed in its complaint, or any relief.

Defendant, having fully answered, asks judgment for its costs herein.

[fol. 48] IN CHANCERY COURT OF CRAIGHEAD COUNTY

COMPLAINT AGAINST MISSOURI PACIFIC RAILROAD COMPANY

On July 19, 1923, plaintiff filed a complaint against the Missouri Pacific Railroad Company, which contained the same allegations in all respects as the complaint against the St. Louis-San Francisco Railroad Company, except as to:

(1). The name and identity of the defendant.

(2). The property upon which the assessment was made and the amounts of taxes for the years sued for.

The Missouri Pacific Railroad Company was sued for \$4,414.80 taxes for the year 1921, and for \$4,362.40 taxes for the year 1922. The same relief was asked for and the same exhibits were attached

as in the case of the complaint against the St. Louis-San Francisco Railroad Company. As the complaint and exhibits are lengthy, it is believed that no useful purpose would be served by setting them out at length, in view of their being identical with the Frisco complaint.

IN CHANCERY COURT OF CRAIGHEAD COUNTY

ANSWER OF MISSOURI PACIFIC RAILROAD COMPANY

As the answer of the Missouri Pacific Railroad Company is not the same as that filed by the Frisco, it will be abstracted. This answer was filed on August 10, 1923, and is as follows (omitting caption and signatures of counsel):

[fol. 49] Comes the defendant, Missouri Pacific Railroad Company, and for its answer to the complaint admits its corporate existence, domicile and ownership and operation of line of railroad as alleged in the complaint, and says it has complied with all the laws of the State of Arkansas in respect to its authorization to own and operate such railroad, as a common carrier of freight and passengers, both interstate and intrastate.

It admits that on February 17, 1921, in the United States District Court for the Eastern District of Arkansas, judgment was rendered in favor of the Maccabees against Craighead County, in the sum of \$77,680.

It admits that on March 2, 1921, the Maccabees, in the name of the United States, filed petition for mandamus against the then assessor of Craighead County, county judge of Craighead County, and members of the State Tax Commission of the State of Arkansas, to require said defendants to assess the taxable property in Craighead County on a basis of its full actual value, and admits that there was service of summons upon hearing upon the petition for mandamus, and that on April 7, 1921, an order was granted, of which exhibit "F" to the complaint is a correct copy.

Defendant denies that such order was served upon C. E. Cordell, A. C. Martineau or Monroe Smith, then members of the State Tax Commission, or any of them, and defendant denies that the State [fol. 50] Tax Commission of the State of Arkansas, in compliance with the writ of mandamus or otherwise, assessed the property of defendant in Craighead county at a sum double the theretofore existing rate of assessment upon the same, and denies that the said Tax Commission directed the tax assessor of Craighead county, in extending assessments upon the taxbooks of the county, to extend same against property of this defendant at its full value, or at double the amount theretofore assessed. And defendant alleges that the Tax Commission of the State of Arkansas did not, by certificate of its chairman and secretary, or in any other way, on or before the 1st day of September, 1921, or at any other time, certify to or advise the assessor of Craighead County to extend upon his records an assessment purporting to represent the full actual value of defendant's

property, or double the amount of valuation theretofore extended against same.

Defendant admits that the assessor of Craighead County extended assessment against property of this defendant in said county in two different amounts, to-wit: \$441,480 and \$882,960, and admits that the quorum court of Craighead County levied a tax of five (5) mills for county general purposes, but denies that the quorum court undertook to find or set out any assessed values. And defendant alleges that the valuation on its property certified by the State Tax Commission to the county assessor of Craighead County was not \$882,960, but was \$441,480, and that its tax should have been computed upon the same amount of \$441,480, which would make its tax [fol. 51] for county general purposes \$2,207.40, and not \$4,414.80, as claimed in the complaint. And defendant shows to the court that prior to April 10, 1922, the last date when taxes might be paid without penalty for the year 1921, it tendered to the collector of Craighead County the said sum of \$2,207.40, which he refused to accept. And the defendant still tenders to pay such last mentioned sum as its county general tax for the year 1921.

Defendant admits that it paid all taxes claimed by the collector of Craighead County to be due said county by the defendant for the year 1921, except for the difference on the county general tax above set out, and denies that plaintiff is entitled to recover any penalty or cost on such amount.

Defendant admits that for the year 1922 there was extended against its property in Craighead County an assessment of \$436,240 and also an assessment of \$872,480, but says the amount of \$436,240 was the amount fixed by the State Tax Commission, and not the amount of \$872,480, and that the proper assessment was the former and not the latter amount.

Defendant admits that the quorum court of Craighead County levied a tax of five (5) mills on the dollar for county general purposes upon all property in the county, but denies that such five mill tax should have been or should be computed except upon the amount of \$436,240 certified by the Arkansas Tax Commission, making the [fol. 52] tax due by it for county general purposes \$2,181.20 instead of \$4,362.40 as set out in the complaint. Defendant paid all taxes charged against it for the said year, except the said amount due for county general purposes, and such amount was tendered to the collector of Craighead County prior to April 10, 1923, but the same was refused by him. And defendant still tenders the said amount of \$2,181.20 as its county tax for the year 1922. Defendant denies that it is liable for any penalty or interest as sued for in the complaint.

Defendant demurs to paragraph number 15 of the complaint, in which paragraph it is stated, in substance, that if the court shall find that the Arkansas Tax Commission or the Railroad Commission did not legally or properly make the assessment sued upon by plaintiff, then plaintiff desires to proceed under the provisions of sections

10204 to 10214 of Crawford & Moses Digest of the statutes. And defendant states that its reason for demurring to said paragraph is that none of the grounds set out in the statute therein referred to as authorizing the Attorney General to bring such a suit or the courts to award such a decree exist in this case. And defendant denies that all other taxable property in Craighead County for the year 1921 and 1922, either in compliance with the terms of the mandamus or otherwise, paid their county general tax on the basis of full value assessment as fixed in the mandamus.

Defendant denies that the amount of its county tax for the year [fol. 53] 1921 or 1922 is settled as res adjudicata by the judgment in the Federal court or the mandamus issued thereupon.

II

Defendant says that it is the owner and engaged in the operation of a line of railway into and through the State of Arkansas, with various branch lines, and that its lines run through many counties in said State.

That for the years 1921 and 1922, and many years prior thereto, the Arkansas Tax Commission or the Railroad Commission have, by rule adopted and promulgated, fixed an assessment upon a basis assumed by them to be 50% of the full value of the property, and such rule has been adopted for all the counties in the State. And proceeding under its legal power to assess railroad property, the said Commission has undertaken to follow the same rule.

The mandamus "requiring the defendants to assess at its full value in money all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for \$77,680 and costs shall have been paid in full," is void because in contravention to section 5, article 16 of the Constitution of Arkansas, which provides that "all property subject to taxation shall be taxed according to its value, that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State."

[fol. 54] Still denying that the Arkansas Tax Commission or the Railroad Commission certified to the assessor of Craighead County a valuation against property of this defendant of \$882,960 for the year 1921 or \$872,480 for the year 1922, defendant alleges that if such Commission did in fact certify such valuations to the Tax Assessor of Craighead County, its action in so doing was void because in violation of the uniformity clause of the Constitution of Arkansas, hereinabove recited.

And defendant alleges that the fact that the assessor of Craighead County undertook to extend two separate and distinct valuations against property in the said county does not have the effect of in any way rendering the said mandamus constitutional, since the question of whether or not it is constitutional must be tested by its own language, and not by any unauthorized deviation therefrom on the part of the said tax assessor or the Arkansas Tax Commission.

Defendant shows to the court that the attempted assessment in Craighead County of its property in an amount double, or in excess of the amount for which property of the same value is assessed in other counties, constitute an effort to illegally exact the amount of tax upon such excess valuation, and as against the enforcement of such illegal exaction defendant has a constitutional right to protection.

Wherefore, the defendant prays that the complaint be dismissed, and for its costs and all other proper relief.

[fol. 55] IN CHANCERY COURT OF CRAIGHEAD COUNTY

AGREED STIPULATION OF FACTS

Subject to the objections of plaintiffs to admissibility on the ground that same is incompetent, irrelevant and immaterial and constitutes a collateral attack on the Federal mandamus judgment relied on by plaintiffs, it is stipulated and agreed between the undersigned solicitors, representing the parties to the above suits, that the valuation of all property for taxation, including railroad property, in all counties other than Craighead and such other counties in which mandamus proceedings for full value assessment were had, was fixed by the State Tax Commission and the county assessors and boards of assessments and valuation on a basis of fifty per cent (50%) of its true value in money, for the same years for which the taxes sued for were assessed.

It is also stipulated that the following constitutes true and correct copies of letters between the tax assessor of Craighead County, [fol. 56] Arkansas, and the Arkansas Tax Commission, copies attached marked exhibits 1 and 2 hereto and may be read in evidence.

It is admitted that the order, exhibit "F," to the complaint, was served on all parties thereto some time in April, 1921, and that summons was served on all defendants in mandamus petition, as shown by exhibit "E" to the complaint, which is true copy of summons and return thereon.

It is stipulated that exhibits 3 and 4 and 5, being certificates from State Tax Commission, will be admitted as evidence.

EXHIBIT 1

"Jonesboro, Ark., Sept. 8, 1921.

"State Tax Commission, Little Rock, Arkansas, Mr. Brown, Sec.

DEAR SIR: In compliance with an agreement with the attorneys for the Maccabees, we assessed all property in Craighead at 100% for county tax only. We did this by using an extra column in our assessment books,

Shall I double the assessment that you sent me, likewise?

Awaiting an early reply, I am

Very respectfully, (Signed) J. L. King.

Box 250, Jonesboro, Ark.

[fol. 57]

EXHIBIT 2

September 10, 1921.

Mr. L. J. King, Assessor Craighead County, Jonesboro, Arkansas.

DEAR SIR: Referring to yours of the 8th inst. in which you state that all property in Craighead County had been assessed as one hundred per cent for county tax only, and ask if the Tax Commission's assessments should be doubled for county purposes, I have to advise that, since all property is required to bear the burden of taxation equally, I should think that the Tax Commission's assessments should be doubled for county purposes. However, since a one hundred per cent assessment for county purposes is the result of an agreement and is not required by our tax laws, I rather think that, should any of the companies or corporations assessed by the Tax Commission object to this assessment for county purposes, it would not be sustained by the courts.

Yours very truly, Arkansas Tax Commission, (Signed) by
E. W. Brown, Secretary. EWB-MS.

[fol. 58]

EXHIBIT 3

"Little Rock, Arkansas, April 1, 1921.

The following order was made by the Arkansas Tax Commission, and the secretary instructed to mail certified copy of same to each county clerk and county assessor:

"By virtue of the authority vested in the Arkansas Tax Commission by Act 263 of the Acts of the General Assembly of the State of Arkansas, approved March 17, 1917, the Arkansas Tax Commission, duly assembled in regular session and acting as such Commission, do hereby adjudge, fix and certify to each county clerk and county assessor in their respective counties, 50% of the market value of all property in this State as the percentum of market value we have, or will use in valuing for taxation for the year 1921, the property we are required to value.

Arkansas Tax Commission. (Sgd.) Monroe Smith, Chairman.

Attest: (Sgd.) E. W. Brown, Secretary.

I, E. W. Brown, secretary tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a

true and correct copy of an order made by the Arkansas Tax Commission under date April 1, 1921, as appears of record in minute book of the Commission, page 174.

[fol. 59] In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E. W. Brown, Secy. Tax Division of Arkansas Railroad Commission. (Seal.)

[fol. 60]

EXHIBIT 4

Office of Arkansas Tax Commission

Little Rock, Arkansas, March 28, 1922.

At a meeting of the Commission on this the 28th day of March, 1922, the following order was made and the secretary instructed to forward copy of same to each county clerk and county assessor of the State:

"By virtue of the authority vested in the Arkansas Tax Commission by Act No. 263 of the Acts of the General Assembly of the State of Arkansas, approved March 17, 1917, the Arkansas Tax Commission, duly assembled in regular session and acting as such Commission, do hereby adjudge, fix and certify to each county clerk and county assessor in their respective counties, fifty (50%) per cent of the market value of all property in this State, as the per centum of market value we have, or will use in valuing for taxation for the year 1922, the property we are required to value."

Arkansas Tax Commission. (Sgd.) A. C. Martineau, F. E. Brown, Commissioners.

Attest: (Sgd.) E. W. Brown, Secretary."

I, E. W. Brown, secretary tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a true [fol. 61] and correct copy of an order made by the Arkansas Tax Commission under date March 28, 1922, as appears of record on page 219 of the minute book of the minute book of the Commission.

In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E. W. Brown, Secy. Tax Division of Arkansas Railroad Commission. (Seal.)

[fol. 62]

EXHIBIT 5

Resolution of Arkansas Tax Commission Adopted September 18, 1922

Whereas, the Maccabees have obtained a writ of mandamus ordering and directing the members of the Arkansas Tax Commission

to assess the property of all public utilities and other taxable property in Craighead County, Arkansas, at its full market value in money, instead of the fractional basis of assessment of fifty per centum which has been certified out by the Arkansas Tax Commission as the basis upon which the property of the State for the year 1922, the Maccabees being a creditor of Craighead County, Arkansas; and

Whereas, the certificates of the assessment of such property in such county so assessed by the Arkansas Tax Commission have, in compliance with the regular basis of assessment, been made upon fifty per centum of true value;

Now, therefore, in compliance with the terms of said writ of mandamus, be it hereby resolved by the Arkansas Tax Commission:

1. That the assessor of Craighead County, Arkansas, be and he is hereby commanded and directed, in extending said assessments upon the taxbooks of Craighead County, Arkansas, to double the amount of the assessment as shown by the certificates of this Commission, for the purpose of extending thereon the general county tax rate for [fol. 63] Craighead County, Arkansas, and that he show in a separate column said fifty per centum assessment for the purpose of extending State, three mill county road tax, school district tax and municipal corporation tax thereon.

2. That this resolution shall extend to all property in said county of Craighead assessed by the State Tax Commission, and shall be considered as amending and correcting each one of said certificates to the same extent and with the same effect as if this resolution were set out in full upon each one of the said certificates of assessment so made by the said State Tax Commission.

3. Said assessor of Craighead County, Arkansas, is also ordered, directed and commanded with respect to the assessment of all property in Craighead County, Arkansas, which is assessed by the township boards of assessment and valuation of said county, or by the assessor himself, to show the same in his assessment books in two separate columns, one column to be upon a one hundred per centum basis, or at full value, and the other on the ordinary fifty per centum basis of true value; and upon the one hundred per centum assessment shall be extended the county general tax, and upon the fifty per centum assessment shall be extended State and all other taxes imposed by the various taxing units of said county.

Arkansas Tax Commission. (Signed) E. F. Friedell, Chairman.

[fol. 64] I, E. W. Brown, secretary of the Arkansas tax division of the Arkansas Railroad Commission, do hereby certify that the above and foregoing is a true and correct copy of resolution adopted by the Arkansas Tax Commission on the 18th day of September, 1922, as shown by records of this office.

In witness whereof I have hereunto set my hand and seal of the tax division of the Arkansas Railroad Commission, this the 17th day of August, 1923.

E. W. Brown, Sec. Tx. Div. Arkansas Railroad Commission.
(Seal.)

[fol. 65] IN CHANCERY COURT OF CRAIGHEAD COUNTY

NOTATION AS TO CERTIFIED COPY OF ORDER OF MANDAMUS OF FEDERAL DISTRICT COURT

The certified copy of the order of mandamus of the Federal District Court here set out in transcript will not be recopied in this abstract for the reason that it already appears as exhibit to the complaint abstracted herein.

IN CHANCERY COURT OF CRAIGHEAD COUNTY

AFFIDAVIT OF L. J. KING

L. J. King testified as follows: I am county assessor of Craighead County, Arkansas, and have been since 1921, am now holding my second term, having first come into office on January 1, 1921. I was one of the defendants in the mandamus proceeding brought by the Maccabees. The writ of mandamus from the Federal District Court was served on me a few days after April 7, 1921. The assessing period does not start until the first Monday in May. I advertised the first of April and began making my rounds the first Monday in May. The assessment made in taxing year 1921 did not start until after this mandamus order had been served on me. Later a question arose as to whether the Federal mandamus order meant that the assessment should be made on 100% basis for all taxes or for county general taxes alone. It was agreed with the Maccabees, [fol. 66] but the agreement was not carried out, because the people would not pay their taxes in cash. I wrote Judge Trieber, Judge of the Federal District Court that rendered the order of mandamus. I wrote this letter to Judge Trieber asking for an interpretation of the order so that I might comply with the order and not be in contempt of court. I did this after receiving letter from Judge Rose, threatening me with contempt of court. As there was a difference in the opinion of local attorneys, I wrote Judge Trieber and asked him the meaning of the order. The illustration sent with the letter has been lost. The illustration was two columns, I headed one "50%" and the other "100%" for county purposes only, fifty per cent for all taxes and 100% for county general only. The letter to Judge Trieber and his reply is offered in evidence as exhibit "H" and was in words and figures as follows:

"Jonesboro, Ark., Sept. 15, 1922.

"Hon. Judge Trieber, Little Rock, Ark.

DEAR SIR: With reference to the mandamus issued by your court ordering me, as assessor of Craighead County, to assess all property in said County at 100% valuation for the purpose of satisfying a judgment against the county in favor of the Maccabees.

If I assess at 100% valuation for county purposes and 50% valuation for other taxes, will I have complied with your order?

[fol. 67] That is, if I head one column in my assessment book as per illustration on next page will I be complying with the order of the court?

The advice and counsel that I have received concerning this matter is confusing, and if you will be so kind as to give me the information requested, I will certainly appreciate it. I am desirous of complying with the court's order, and do not wish to be misled by the opinion of others.

Thanking you in advance for your kindness, I am

Very respectfully, L. J. King, Assessor."

"The mandamus of this court refers only to an assessment for general county purposes. It does not apply to any other assessments. Whether you can make a distinction in the assessments is not a matter for this court to pass on under the mandamus. I gave the same information to Judge Gregg.

Trieber, Judge."

The letter from Mr. Rose was offered in evidence as exhibit "B," and was in words and figures as follows:

[fol. 68]

"Little Rock, Ark., Sept. 16, 1922.

"Mr. L. G. King, Assessor, Jonesboro, Arkansas.

DEAR SIR: We have received a letter from Mr. Horace Sloan, in which he says that you will double the assessment only for county general taxes. There is no law for anything of that kind, and if you undertake to do that, the tax sales would be void, and we should have no means of enforcing payment. You are therefore advised that, if you fail to double the taxes for all purposes, we shall have you cited for contempt.

This is not the year for assessing real estate; but you paid no attention to the mandamus, which was served upon you last fall, and you must now do what was then required or we shall institute contempt proceedings. You cannot defeat the jurisdiction of the Federal Court in the matter by failing to obey its mandamus.

Rose, Hemingway, Cantrell & Loughborough. G. B. Rose.
GBR-JG.

Register.

In making the assessments for the taxing year 1921 I assessed all the property in the county on a basis of fifty per cent for all taxes except county general tax and on a basis of one hundred per cent for county general taxes. I understood that this scrip was drawn on county general fund and due out of county general tax. I did the same thing for the taxing year 1922, and assessments on public utilities when sent to me by the Arkansas Tax Commission were [fol. 69] extended in the same manner; while the Arkansas State Tax Commission made out the certificates at 50% they ordered me afterwards to assess the public utilities at 100% for county general

tax. They ordered me to do that by letter in 1921 and by resolution in 1922.

IN CHANCERY COURT OF CRAIGHEAD COUNTY

TESTIMONY OF HOMER HOWELL

Homer Howell testified as follows: I am collector of revenue of Craighead County. I went into office on January 1, 1921, and have held the office since that time. As collector I collected the 1921 taxes in the year 1922 and the 1922 taxes in 1923. During both of these tax collecting periods I collected taxes on the basis of full value assessment for county general purposes. Except for the usual number of delinquencies, every one paid except the Missouri Pacific Railroad Company and the Frisco. The Cotton Belt did not pay in 1921, but they did pay later for 1921 and 1922. By Cotton Belt I mean the St. Louis Southwestern Railroad Company. The Jonesboro, Lake City & Eastern Railroad Company also paid full value assessment for county general purposes at the regular time each year, and so did the telephone company.

Cross-examination.

By Mr. Orr:

The Frisco tendered me all taxes on 50% basis and I accepted all taxes except the county part, and the reason why I refused the 50% [fol. 70] on county part was because I didn't think I could divide it.

Cross-examination.

By Mr. Frierson:

The same thing is true of the Missouri Pacific Railroad Company.

Redirect examination:

Neither the Missouri Pacific Railroad Company nor the St. Louis-San Francisco have actually paid any part of county tax for the year 1921 or 1922, but they tendered me what they claimed to be the regular one-half, and I refused to accept that on the ground that they must tender all or none, or I would be without authority to accept it, and the full amount remained unpaid.

Recross-examination.

By Mr. Frierson:

There was no difference in the figures or calculations between me and the railroad companies except that they were unwilling to pay on 100% valuation for county purposes. They wanted to pay county

taxes on 50% basis. These tenders were made on or before April 10, 1922 and 1923.

Redirect examination:

It was here stipulated that the amounts of taxes alleged to be due under full value assessment for county general purposes to Craighead County appear on taxbooks of Craighead County as sued for in the complaints.

[fol. 71] Here appears in the transcript a copy of the tax books for the year 1921, setting out in full assessments of the defendant railroads. As there is no contention over the amounts of assessments, but only whether or not the assessment of 100% valuation can be enforced this abstract is not incumbered with these figures, as they are very voluminous and would serve no purpose in determining the issues on this appeal.

There was no further evidence offered in the cause by either party.

[fol. 72] IN CHANCERY COURT OF CRAIGHEAD COUNTY

STATE

v.

FRISCO RY. et al.

OPINION

Horace Sloan, A. P. Patton, for Plaintiff.

Gordon Frierson, W. J. Orr, for Defendants.

Gautney & Dudley, E. L. Westbrooke, of Counsel for Defendants.

GENTLEMEN: The following propositions have been brought into this controversy, but the conclusion reached does not depend on the affirmance of all of them:

1. The order of mandamus in the Maccabees case is res judicata, unless void.

2. The validity of the mandamus must be tested in this court by the laws and Constitution of this State, as construed by the State Supreme Court.

3. The order of mandamus was not obeyed.

4. This court should not enforce an assessment void under the plain terms of the Constitution.

5. A Federal court will determine for itself what is the law of a State affecting a contract made prior to a decision of the State court, but such determination will not be binding upon the State court in another suit, between different parties, or where there is an absence of the principles of res adjudicat-.

6. This case involves no attempt to interfere with the exercise of the jurisdiction of another court.

[fol. 73] 7. The full faith and credit clause, or comity, is not here involved except as to the order of mandamus.

8. The *Jimmerson* and *Cargill* cases are not *res judicata*, but are cited authorities.

9. No Federal question is involved.

10. The U. S. Constitution prohibits the passage of any law impairing the obligations of a contract. A judicial decision cannot impair except when it does that which amounts to legislation; for example, a court renders a decision, which of course has the effect of law, on the faith of which a contract is made, after which the court overrules its prior decision.

11. The proposition that *Meeks v. State*, 127 Ark. 349, is the first pronouncement of our court as to the duties of the assessing officers, here involved, is debatable.

12. A void judgment is no judgment and cannot be a basis for any asserted right.

Not all of the foregoing propositions will be discussed. Some are evident, and cannot be resisted by any sound contention.

Order of Mandamus

What is a void judgment? What is the distinction between a void and an erroneous judgment? A void judgment is also erroneous. To render a valid judgment, as distinguished from a void judgment, jurisdiction of the subject-matter and the person must not only exist, but the court must have the power to render the particular judgment in the particular case. This rule was announced in the case of *Munday v. Vail*, 34 N. J. L. 418, which is a leading case upon this subject, and a part of the opinion in this case announcing this rule was adopted by Black in his work on *Judgments*, Vol. —, page —. The rule announced therein has been approved repeatedly by the Supreme Court of the United States, and by many, if not all, the courts. It is earnestly contended that the court in the *Maccabees* case had jurisdiction of both the person and subject-matter and the power to make an order of mandamus in that case, and that, if the court mistook the law prescribing the duties of the officers, its order was erroneous and not void. The premises is conceded, but the conclusion cannot be accepted. A court in a proper case can compel an officer to perform his ministerial (not discretionary) duties. These duties as fixed by law mark the outside limits of the powers of the court in this regard. A judgment of a court directing an officer to do that which is not his duty, is beyond the power of the court, it has no power to render the particular judgment.

A justice of the peace, having jurisdiction of the person and subject-matter in misdemeanor case, cannot impose the death penalty, because it has no such power in any case.

A court of equity, having jurisdiction of a husband and wife as defendants in a foreclosure proceeding, cannot decree a divorce between the husband and wife in that case; it lacks the power to render the [fol. 75] particular judgment, yet it has jurisdiction of the person and subject-matter. In a proper case it could render such a decree, the court having general jurisdiction of the subject-matter of divorce.

Differently stated, a judgment is erroneous when a court commits error in the exercise of its power, while a void judgment is where the court commits errors as to its powers. A mistake in the first is not fatal to the judgment, while it is in the latter; one can be cured, the other cannot; one may become final and binding, the other cannot.

While a court is acting within its power as delegated to it by the laws and Constitution, but mistakes either the law or the facts, its judgment based thereon is erroneous only, and must be corrected by appeal or writ of error; or it is final and conclusive as if no error had been committed. Not so where a court oversteps its power; the court's mistake in such a case is not in the exercise of its authority but in assuming authority which it has not.

A court having jurisdiction of the person and subject-matter may order and compel an officer to perform a ministerial duty. Such duties are fixed by law, and if the order directs a duty not fixed by law, to that extent the order is void, being in excess of the power of the court. This must be true for the reason that, if the court cannot create duties not made by law, but which would be in violation of law, it would follow that the court has the power to suspend or [fol. 76] change the law. The government is divided in three separate and independent departments. The judiciary is one of these, and has no legislative functions, and therefore has no power to change the law. Any attempt by one department to exercise functions and power which belong to another department is absolutely void. *Kilbourne v. Thompson*, 26 L. Ed. U. S. 377; *Town of Hoxie v. Gibson*, L. Reporter October 23, 1922; *U. S. v. New River Colliers Co.* U. S. May 21, 1923, Adv. Sheet June 15, 1923; *Monongahela Nv. Co. v. U. S.* 37 L. Ed. 463; *Ex parte Rowland*, 104 U. S. 604.

The Assessment

The mandamus required the officers to assess the property of Craighead County at its full value. It may be here observed that such an assessment would be void under the Constitution unless made in all the counties of the State. It may be further observed that the State Tax Commission has the discretion to fix the percentage for any one county, but the tax officials did not comply with the court's order; they made a 100% valuation for Craighead County for county purposes only, while they made another assessment of Craighead County property for all other purposes at a valuation of 50%. The

assessment so made shows two valuations of the same property. This cannot be under the Constitution of this State. The language of the Constitution forbids construction upon this point. The Tax Commission, prior to the order in question, directed the several county taxing officials to make a 50% assessment and it became the duty [fol. 77] of said officials to make just that assessment. To require them to make any other assessment was contrary to law. That the Tax Commission had authority to fix the percentage was decided by our courts before 1916. The old statutory requirement that property be assessed at 100%, or full valuation, has long been abrogated by subsequent legislation. Measured by the laws and Constitution of this State, as construed by our Supreme Court, the assessment in question must be held to be void, and if the said assessment is in obedience to the order of the court, the order of the court must also be held void for the reason that it prescribed duties contrary to the law and Constitution of this State, a power which the court did not have. *Hays v. Mo. Pac. Ry. Co.* 14 Law Rep. 201.

It may be observed that if this case were pending in the Court of Appeals, the opinion in the *Cargill* case informs us what would be the holding of that court as to the order in question. Conceding the right of that court to decide for itself what is the State law in a case before it, it is certainly within the power of the State court to do likewise. It certainly is the duty of this court to follow what the Supreme Court of the State has said is the law. The independence of courts to act in cases before them is not confined to the Federal courts, but is equally exercised by all other courts.

The full faith and credit clause of the Constitution of the United [fol. 78] States has application only where a judgment of the court has settled certain issues between certain parties. Such a judgment must be given full faith and credit when those issues are subsequently involved in a case between the same parties before another court. We have no such case here, except as to the order of mandamus. The full faith and credit clause applies to valid and not to void judgments.

There is no Federal question here, and no Federal right is claimed, unless it be that the contract of the *Maccabees* has been impaired. There is no ground for this contention, as the impairment clause of the Constitution forbids the subsequent passage of a law which impairs its obligations. It is not claimed that any such law has been passed. The Supreme Court has repeatedly decided that the obligations of a contract are never impaired by judicial decision, except where the same has resulted in making law. One example will suffice: A court renders a decision, which of course has the effect of law, on the faith of which a contract is made, after which the court overrules the prior decision. This would be changing the law as previously announced by the court, and if such a subsequent decision impaired the obligations of a contract, this would be a Federal question, and the courts would give effect to the contract as though the subsequent decision had never been rendered.

In the foregoing it has been conceded that the Federal court had a [fol. 79] right to determine for itself what the laws of the State are,

and that the Meeks case was the first pronouncement of our court defining the duties of assessing officers. It is stated that the Meeks case was decided after the Maccabees had bought the county warrants, and that this fact gives the Federal court the right to decide for itself as to the law defining the duties of taxing officials.

It is a well settled rule of the United States Supreme Court that the decisions of the Supreme Court of a State as to its statutory law and Constitution is final and conclusive upon all other courts, except where rights have arisen or contracts have been made before the law in question has been construed by the State Supreme Court. It occurs to me that the questions decided in the Meeks case had in substance been decided in several cases long before the Maccabees acquired the county warrants in question. See the cases referred to in the Meeks case. The decision in the Meeks case was a necessary conclusion from prior decisions of the court. In other words, if the Meeks case had held, as did the Court of Appeals in the Jimmerson case, the decision would have in fact overruled prior decisions of the court. From this it may be stated that the duties of the taxing officials were well defined prior to the time when the Maccabees bought the warrants in question and the decision in the Jimmerson case.

The validity of the order of mandamus may be omitted in the consideration of this case, since that order was not obeyed by the officers, the assessment was not in obedience to this order, and its validity could not find support in the order, it follows that the assessment must stand independent of any support other than the laws and Constitution of this State, of which sufficient has been said. If we leave out of consideration the laws of this State and the decisions of our courts heretofore referred to, we must find from the plain terms of the Constitution that the assessment in question is absolutely void. It is the duty of this court to uphold the Constitution and not to violate it.

Decree dismissing the complaint for want of equity may be prepared.

Respectfully, J. M. Futrell. JMF-EF.

[fol. 81] IN CHANCERY COURT OF CRAIGHEAD COUNTY

DECREE

The above consolidated cases this day (August 22, 1923) coming on to be heard, the plaintiff appears by its attorneys, and the defendant companies appear by their attorneys, and both parties announcing ready for trial, the cause is heard upon the complaints and exhibits, the answers and exhibits, stipulation of facts, certified copy of order of mandamus of Federal District Court, and the depositions of L. J. King, assessor of Craighead County, and Homer Howell, collector for Craighead county, from all of which the court finds that these are suits brought by the plaintiff against the defendants to

recover certain amounts alleged to be due upon the tax for general county purposes for the years 1921 and 1922, the amounts sued for as to the defendant, St. Louis-San Francisco Railway Company, being \$9,021.87 for the year 1921 and \$9,021.87 for the year 1922, a total of \$18,043.74, and as to the defendant Missouri Pacific Railroad Company, \$4,414.80 for the year 1921 and \$4,362.40 for the year 1922. That the plaintiff also seeks to recover penalty of twenty-five (25) per cent upon the above amounts and all of them, and also seeks to recover interest upon the 1921 taxes since April 10, 1922, all at the rate of ten (10) per cent per annum. The defendant St. Louis-San Francisco Railway Company admits that it is due Craighead County for the year 1921 county taxes in the sum of \$4,510.94 and for the 1922 county tax the sum of \$4,510.94, and the defendant Missouri Pacific Railroad Company admits that it is due the county of Craighead the sum of \$2,207.40 as taxes for the [fol. 82] year 1921 and \$2,181.20 as taxes for the year 1922. The court finds that the defendants each did, on or before April 10th of the years mentioned, tender to the collector of Craighead County such amounts, which he refused to accept, and that since the filing of these suits neither of the defendants has delivered to the clerk of this court the amount of taxes which they severally admit to be due, but if said amount had been paid to the clerk, the plaintiff would not have accepted it.

The court orders and decrees that all depositions, stipulations and agreements offered in evidence on behalf of either party be and they are hereby made a part of the record herein.

The court, being fully advised, finds for the plaintiff against the defendant, St. Louis-San Francisco Railway Company, in the amount of \$9,021.27, being the amount which it admits to be due covering the taxes for both 1921 and 1922.

The court further finds for the plaintiff against the defendant Missouri Pacific Railroad Company in the amount of \$4,388.60, being the amount which it admits to be due covering the taxes for both 1921 and 1922.

The court further finds that the plaintiff should recover no interest on said amounts as against any of said defendants prior to the time fixed herein below.

The court further finds that a lien should be decreed against the whole line of the respective defendant railroad companies, including [fol. 83] the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles, and bridges for the amounts adjudged to be due by them respectively.

It is therefore by the court considered, ordered and decreed that the plaintiff have and recover of and from the defendant St. Louis-San Francisco Railway Company, the sum of \$9,021.87, payable in cash or in warrants of Craighead County, and that a lien be and the same is hereby decreed on the whole line of the railway, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles and bridges, and all lands in the State belonging to said defendant.

It is further considered, ordered and decreed by the court that the plaintiff have and recover of and from the defendant, Missouri Pacific Railroad Company, the sum of \$4,388.60, payable in cash or in warrants of Craighead County, and a lien be and the same is hereby decreed on the whole line of the railroad, including the main line, sidetracks, switches, turnouts, improvements, stations, structures, rights-of-way, embankments, terminals, cuts, ties, trestles and bridges belonging to said defendants.

That if the indebtedness herein adjudged be not paid within twenty days from this date, said property be sold on three months credit, at public sale, on giving twenty days notice in some newspaper published in Craighead County and having a bona fide circulation therein, to the best and highest bidder, a lien to be retained on the property until all of said indebtedness has been paid in full; and

It is further adjudged and decreed that Zera E. Watkins, clerk of this court, is hereby appointed as special commissioner of this court to make the sales herein ordered.

It is further by the court considered, ordered and adjudged that if the defendants do not pay to the clerk of this court the amount herein respectively alleged to be due by them within four months from the date of this decree, they, or any one of said companies in default in payment, shall, from the lapse of said four months period, pay interest on said judgment at ten per cent per annum until paid. The clerk, on receiving said sum, if it be not accepted by the plaintiff on account of taking appeal to the Supreme Court of the State, shall deposit said amount on time deposit in some responsible bank, at four per centum interest, said interest to go to the party litigant entitled thereto when any appeal herein shall have been finally determined.

With respect to the prayer of the complaints against the two defendant railroad companies in which the plaintiff seeks to recover the additional assessment made upon the railroad companies under the alleged authority of the mandamus order of the Federal court, it is by the court considered, ordered, adjudged and decreed that the plaintiff recover nothing, and with respect to said contention said complaint [fol. 85] is hereby dismissed for want of equity.

It is further by the court considered, ordered and adjudged that the prayer for the imposition of the twenty five per centum penalty for delinquency upon the defendant railroad companies is without equity, and said complaints, so far as they relate to said penalties, are hereby dismissed for want of equity.

It is further ordered, adjudged and decreed that the plaintiffs pay the costs herein.

To which decree of the court the plaintiff excepted, both generally and in the following particulars:

(a) To the action of the court in refusing to recognize the validity of the Federal mandamus and the assessment made thereunder on the defendants.

(b) To the action of the court in refusing to impose the 25% penalty for delinquency in the payment of taxes upon the defendant railroad companies.

(c) To the action of the court in refusing to hold the defendant companies liable for interest on the ground that they had not kept their tender good.

(d) To the action of the court in adjudging costs against the plaintiff instead of against the defendants.

(e) To the action of the court in refusing to adjudge the 10% penalty provided by section 10209 of Crawford & Moses Digest.

[fol. 86] Plaintiff prayed an appeal to the Supreme Court of Arkansas, which is hereby granted.

J. M. Futrell, Chancellor.

[fol. 87] IN CHANCERY COURT OF CRAIGHEAD COUNTY

PETITION FOR REHEARING—Filed October 3, 1923

Comes the plaintiff and for its petition for rehearing herein respectfully represents:

(1) That the court erred in holding that no Federal question is involved here, in that:

(a) The judgment of the United States District Court upon which the complaint herein is based represents an exercise of an authority under the United States, and the decision is against the validity of the exercise of that authority.

(b) The Federal District Court was established by Congress under the judicial power granted by the United States in article III, section 1, of the Federal Constitution; that the judicial power of said court, both under the Federal Constitution (art. III, section 2) and the acts of Congress pursuant thereto, extends to all "controversies between citizens of different States;" that the judicial power in cases where the requisite diversity of citizenship exists extends to all questions to be decided therein, including all questions affecting State Constitutions and statutes; that under clause 2 of article 6 of the Federal Constitution, the national judicial power, so created and defined, constitutes the supreme law of the land, and the judges in every State are bound thereby, anything in the Constitution or laws of any State to [fol. 88] the contrary notwithstanding. The decision in the present case denies these Federal rights and challenges the power of the Federal District Court to render the judgments alleged in the complaint and admitted by the answer, thus denying rights and powers existing both under the Constitution of the United States and the

acts of Congress made pursuant thereto, as said judgments were rendered in "controversies between citizens of different States."

(c). Art. 1, section 10 of the Federal Constitution provides: "No State shall make any * * * law impairing the obligation of contracts * * *". "The contract in the present case (county warrants) were issued prior to any State decision that mandamus for full value assessment could not issue. At the time they were issued there was a Federal decision holding that it could issue. The contractual rights of the warrant holders made in reliance on the Federal decision could not be impaired by a subsequent State decision to the contrary, without contravening this clause of the Federal Constitution.

(d). Questioning the power or jurisdiction of a Federal Court is in itself a Federal question, because the jurisdiction or power of the court is to be determined from the Constitution and laws of the United States.

(e). Full faith and credit has not been given to the Federal judgments pleaded herein in violation of section 1 of article VI of the Federal Constitution and of the constitutional provisions mentioned in subhead (1) (b) hereof.

[fol. 89] 2. That the court erred in holding that taxpayers were not bound by the Federal judgments pleaded in the complaint.

(3). That the mandamus order and the proceedings thereunder represented the exercise of the ancillary jurisdiction of the Federal court. They constituted process of the Federal court employed to effect collection of the Federal judgment in favor of the Maccabees against Craighead County. Any irregularity or want of power in that process is a question for the Federal, and not for the State, courts, to decide. Hence the State chancery court in the case at bar has itself no power to question the power of the Federal court and thus interfere with the execution of Federal process.

(4). That there was a conflict between the Federal and State courts as to the right to mandamus assessing authorities in Arkansas to make full value assessment for taxation at the instance of a creditor of the county. The Federal court has the right and power to make its independent construction of State Constitutions and statutes, when necessary to protect rights of third parties contracted in reliance on a prior Federal decision, before a contrary decision on the precise point has been rendered by the highest court of the State. The decree herein denies that right and power.

(5). When a court has expressly passed upon its own jurisdiction, collateral impeachment of that decision is not permissible. The error can be corrected only on direct review.

[fol. 90] (6) A State court cannot challenge the jurisdiction of a Federal court to render a particular judgment. A lower Federal court has the exclusive original right to pass upon its own jurisdiction.

If it errs, the remedy is by review in a direct proceeding to upper Federal courts and not by collateral attack in a State court on the Federal judgment.

(7) The alleged defect of power here complained of, i. e., the fact that a Federal court interpreted the State Constitution and statutes differently from the State court, does not raise a jurisdictional question, nor a question of want of power; for

(a) Constitutional questions as well as all other questions become matter of res judicata.

(b) The assessing authorities who were mandamused had jurisdiction of the entire process of assessment; and the Arkansas State Tax Commission had power to require all property throughout the State to be assessed at full value.

(8) The objection of the defendants that the mandamus was too late for the year 1921 was untenable.

(9) The objection that the mandamus was not complied with because property was assessed at full value for county general purposes and at 50 per centum of true value for other purposes is not tenable, because:

(a) The mandamus related only to the county general assessment and did not require that assessment for other purposes be at [fol. 91] full value.

(b) Under this contention the error, if any was made, existed not in the county general assessment (which is the one involved here) but in the assessments for other purposes (which are not involved here).

(c) The error, if any, was favorable to the railroads and they therefore are not in position to complain.

(d) The railroads have waived any objection they might have had to such other assessments by paying the taxes thereon.

(10) The decree of the court is against the law.

(11) The decree of the court is against the evidence.

(12) The decree of the court is against both the law and the evidence.

Wherefore, the term of the court not having lapsed, plaintiff prays the court to grant a rehearing with respect to its determination of this cause, and render decree for plaintiff as prayed for in the complaint.

The petition for rehearing was denied by the court; exceptions of plaintiff saved, and prayer for appeal to Supreme Court of Arkansas granted.

[Title omitted]

OPINION ON MOTION FOR REHEARING

The briefs on the motion to rehear raise no question not heretofore considered. Plaintiff contends at great length that the order of mandamus is binding on this court in the instant case. It would be if it were not void. I have not before heard it contended that a void judgment was binding upon another court in an independent suit, and that in such a case the court could not pass upon the validity of the judgment as affected by the jurisdiction and power of the court to render the particular judgment.

Much is said of the proposition that a court having first acquired jurisdiction of the subject-matter, it must be free from interference by any other court. The proposition is conceded without exception, but has no application here. This court is not attempting to set aside any order or judgment in the Maccabees case, nor to interfere in any way with an officer of that court in obeying the orders of the court in that case. Certain relief is sought in the instant case, and this *could* should not exist if it may not pass upon the questions presented. If it deems the order void, it should so hold, or cease to function.

It is true that if this case should be affirmed by the Supreme [fol. 93] Court of the State, it may be reviewed by the Supreme Court of the United States as to whether full faith and credit has been given to the order in the Maccabees case, provided that question was necessary to a decision in the case, otherwise not.

The order of the court may be omitted from this case as unnecessary to a decision. The order was not complied with in either form or substance, for which reason it may be considered as if no order had been made. How can an order of mandamus support that which it did not command? The assessment is condemned by the clear English of the State Constitution, without reference to any decision of our court. Plaintiff insists that the defendants may take no advantages of this fact, for the reason that, if the order had been obeyed, they would have been compelled to pay all taxes upon a 100 per cent valuation, whereas they were asked to pay upon this valuation for county purposes only. The assessment being in conflict with the Constitution, it must be void. It is a novel proposition that a void assessment may not be assailed. It must be remembered that the defendants have offered to pay upon the legal valuation ordered by the Tax Commission, the only legal assessment that could have been made. How are they to be required to do more?

The reasoning of the court in the cases of Vance v. Little Rock, 30 Ark. 435, and Graham v. Parham, 32 Ark. 676, is against the contentions of plaintiff. The court refers to the fact that the constitutional provisions, then not a year old, could not apply to debts contracted before that time and to the fact that certain levies could be made to pay pre-existing indebtedness. It did not

appear from the record when the indebtedness for which the levy was to pay was made, and presumed that the Federal court was sufficiently advised. Again, the court was asked to undo directly what the Federal court had done.

In the Parham case the constitutional limit was not exceeded. This court is not asked to do what was attempted in those cases, and no such issues are presented. The question of *res adjudicata* is presented here. If the order of mandamus were valid and had been complied with, there would be nothing for this court to do except to give full effect to it. The converse is true.

J. M. Futrell.

[fol. 95]

[Caption omitted]

IN SUPREME COURT OF ARKANSAS

MOTION AND ORDER TO ADVANCE

THE STATE OF ARKANSAS FOR THE USE OF CRAIGHEAD COUNTY,
Appellant,

vs.

ST. LOUIS SAN FRANCISCO RAILWAY CO. ET AL., Appellees

Appeal from Craighead Chancery Court

Comes the appellant by her special attorney and presents a motion to advance this cause as of public interest; and sufficient cause for such advancement being shown, the said motion is passed one week for information as to what time the appellees will need to prepare and file their brief.

[fol. 96] IN SUPREME COURT OF ARKANSAS, November Term, 1923,
December 24, 1923

[Caption omitted]

ORDER SETTING CAUSE

This cause, heretofore tentatively advanced, the time to be later definitely fixed, is now by the Court set down for submission on January 7th prox.

IN SUPREME COURT OF ARKANSAS, November Term, 1923, January
7, 1924

[Caption omitted]

SUBMISSION OF CAUSE

This cause being regularly called, come the parties thereto by their solicitors, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

IN SUPREME COURT OF ARKANSAS, November Term, 1923, February
11, 1924

[Caption omitted]

JUDGMENT

This cause came on to be heard upon the transcript of the record of the chancery court of Craighead county, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, in all things, affirmed with costs.

It is further ordered and decreed that said appellees recover of [fol. 97] said appellant all their costs in this Court in this cause expended.

Hart & Humphreys, J. J., concur.

[fol. 98] IN SUPREME COURT OF ARKANSAS

[Title omitted]

OPINION

McCulloch, C. J.:

There are two consolidated actions involved in this appeal, one against the defendant St. Louis-San Francisco Railway Company and the other against the Missouri Pacific Railroad Company, each instituted in the chancery court of Craighead County by the Attorney General, in the name of the State of Arkansas, for the use and benefit of Craighead County, to recover delinquent county taxes due for the years 1921 and 1922.

It is alleged in the complaint that all property in Craighead County was assessed, for all purposes other than for county taxation, at fifty per centum of its actual value so as to conform to the rate of assessment in other counties, but that there was a separate assessment for county purposes at one hundred per centum valuation, and that this was done under the requirement of a mandamus issued by the United States District Court in a suit instituted by a creditor of the county to recover on past-due indebtedness. It was also alleged that said defendants in each case had paid the taxes extended against its respective property for all purposes other than county taxation, but had each refused to pay the county taxes as extended, and had tendered the amount of taxes due on a fifty per centum valuation. Each [fol. 99] of the defendants in its answer challenged the validity of the assessment on the ground that it was contrary to the laws of this State as interpreted by the court of last resort, and also denied that there had been any assessment of real property by the Tax Commission at a valuation of one hundred per centum.

The facts in the case are undisputed. On February 17, 1921, the United States District Court for the Western Division of the Eastern District of Arkansas, in an action in which an incorporated fraternal association named the Maccabees was plaintiff, and Craighead County was defendant, rendered a judgment in favor of said plaintiff and against said defendant for recovery of the sum of \$77,680; and on March 2, 1921, said court, in an action instituted by said plaintiff, The Maccabees, against the assessing officers and Clerk of Craighead County, and the members of the State Tax Commission, to compel said officers to assess the taxes to pay said judgment against said county, entered a judgment directing that a mandamus issue against the assessing officers and the State Tax Commission requiring an assessment of property for taxes at full valuation. The particular language of this judgment was that "a mandamus issue requiring the defendant to assess, at its full value in money, all property in Craighead County, and to continue said assessment at its full value in money until the judgment of the plaintiff herein for \$77,680 and costs shall have been paid in full."

It does not appear from the record in this case that the Tax Commission [fol. 100] made any change in its assessment of railroad property for the year 1921, but let its assessment stand as made throughout the State on railroad property at a valuation of fifty per centum. The assessor of Craighead County, however, assessed all property in Craighead County at fifty per centum for all purposes other than county taxes, and made a separate assessment for county purposes at one hundred per centum of the valuation, using an extra column on the assessment books for such separate assessment.

In the year 1922, the State Tax Commission, in compliance with the said mandamus issued by the United States District Court, adopted a resolution applicable to the taxable property of Craighead County commanding the assessor of Craighead County to "double the amount of the assessment as shown by the certificates of this Commission, for the purpose of extending thereon the general county tax rate for Craighead County, Arkansas, and that he show in a

X separate column said fifty per centum assessment for the purpose of extending State, three-mill county road tax, school district tax and municipal corporation tax thereon." In each of the years the taxes were extended on the books for county purposes on the basis of one hundred per centum valuation, but for all other purposes on the basis of fifty per centum valuation. Each of the defendants in these actions paid the taxes for all other purposes, but refused to pay the taxes extended against its property for county purposes and tendered [fol. 101] the amount due on an extension based on a valuation of fifty per centum. The tender was refused, and this action was instituted to compel the payment.

The chancellor held that the assessment at full valuation for county purposes was void, and rendered a decree for the recovery by plaintiff of the amount of taxes tendered by each of the defendants; that is to say, the amount of taxes on a basis of fifty per centum valuation.

+ We are unable to agree with the learned chancellor in his view that the judgment of the United States District Court is void because it attempts to impose on the assessing officers a requirement contrary to the Constitution of the State, as interpreted by this court. It is true that the judgment of the court was not in accord with the Constitution, as interpreted by this Court, with respect to the requirement of uniformity throughout the State in the assessment of property. State ex rel. v. Meek, 127 Ark. 349. In that case we held that there must be uniform valuation of property for taxation purposes throughout the State, and that the tax assessor of a given county could not be compelled by mandamus to assess property in his county at full valuation so as to put the assessment out of conformity with other assessments in the State as directed by the State Tax Commission. The decisions of the United States Circuit Court of Appeals for the Eighth Circuit are in conflict with the decision of this court on [fol. 102] that subject (United States, ex rel. Jimmerson, 222 Fed. 489), and the district courts in this circuit are therefore bound by those decisions. United States ex rel. Cargill, 263 Fed. 856. The court of last resort of the State is, of course, the final arbiter in the interpretation and construction of the Constitution and statutes of the State. A conflicting decision of the Federal court does not constitute a precedent to be followed by the State court, but the judgment itself in a given proceeding constitutes a final adjudication of the subject-matter of the litigation so as to bind the State courts under the provision of the Constitution and statutes of the United States requiring full faith and credit to be given to the judgments of the Federal courts. That is to say, the Federal court has jurisdiction of the subject-matter to adjudicate the rights of the parties to the action and their privies. Any judgment rendered thereon will be binding on the State courts, even though the decision is found to be in conflict with the decision of the court of last resort of the State in the interpretation of the Constitution and laws of the State. There is just that distinction between the doctrine of res adjudicata and the doctrine of stare decisis. The Federal courts exercise an independent

judgment in the construction of the Constitution and statutes of the State in which the cause of action arises, and they usually follow the interpretation adopted by the court of last resort in the State, but any error in that respect must be corrected by appeal and does not render [fol. 103] the judgment void. There are many announcements of this rule by the Supreme Court of the United States and the cases are so numerous that it is scarcely necessary to cite them. They are collected in the briefs of counsel in the case.

As a late announcement on this subject, reference is made to the comparatively recent case of *Kuhn v. Fairmont Coal Co.* 215 U. S. 349, and the still later case of *Cumberland Glass Mfg. Co. v. De Witt*, 237 U. S. 447. In the application of this rule it follows that the United States District Court in the litigation between the Maccabees and Craighead County, involving the right to recover for debt and to enforce the judgment, the court had jurisdiction to compel the assessing officers to make an assessment of property for the purpose of raising funds to pay the judgment, and its decision in the interpretation of our Constitution with respect to the limitation upon the taxing power, though in conflict with the interpretation given by this court, was not void for the reason that the jurisdiction of the court, based on the diversity of citizenship of the parties, in the decision of the rights of the parties to that action, drew to that court the jurisdiction to interpret the laws under which the cause of action, if any existed, arose. *Riggs v. Johnson*, 6 Wall. 195; *Prout v. Starr*, 188 U. S. 537. There are decisions of this court holding that even though a Federal court erres in its adjudication with respect to the taxing power of this State, the judgment of that court is binding upon the State court as to rights adjudicated in that particular action, even though in conflict [fol. 104] with decisions of this court in the interpretation of the Constitution and laws of the State. *Vance v. City of Little Rock*, 30 Ark. 435; *Graham v. Parham*, 32 Ark. 676; *Gaines v. Springer*, 43 Ark. 502; *Garland County v. Hot Spring County*, 68 Ark. 83.

The decisions of the Supreme Court of the United States concerning the jurisdiction of Federal courts are conclusive upon the State courts, and that court has decided that it is within the jurisdiction of the Federal court to compel the assessing officers of a State to levy the full limit of taxes allowed by the laws of the State for the purpose of enforcing its judgment. *Memphis v. Brown*, 97 U. S. 300; *United States v. Ft. Scott*, 99 U. S. 152.

Counsel for defendants rely on the decision of the Supreme Court of the United States in *Ex parte Rowland*, 104 U. S. 604, but that case has no application for the reason that it involved a mandamus against officers of a county who had no authority under the laws of the State to assess or levy taxes.

When the effect of the judgment of the Federal court is called in question in subsequent litigation in a State court in which the latter has jurisdiction of the subject-matter and of the parties, the State court may determine for itself the scope and extent of that judgment, though that is a Federal question, which may be reviewed by the Supreme Court of the United States, on proper application, by writ of

error or certiorari. An error of the State court in a decision as to the [fol. 105] effect of the Federal court judgment would have to be corrected in that way. It is therefore proper for us to consider at this point of the controversy what is the effect of the judgment of the Federal court, and this must be determined from an examination of the face of the record in the case in which the judgment was rendered.

The judgment directed that the assessing officers of the county "assess at its full value, in money, all property in Craighead County." This does not specify the mode of assessment, and that is left to the operation of the State laws as construed by this court. It does not direct that the assessment shall extend only to county taxation, but it applies to the whole assessment. This court has decided in a recent case that under the Constitution of this State there can only be one assessment of property for all purposes of taxation—State, county, municipal and school. *Hays v. Missouri Pacific R. R. Co.* 159 Ark. 101. The effect of the judgment of the Federal court, therefore, was to compel the assessing officers to assess all the property in the county at full valuation, in the mode provided by the laws of the State; that is to say, by a single valuation for all taxation purposes. It must be noted, then, that the valuation made by the assessing officers did not conform to the judgment of the Federal court in assessing at a full valuation, nor in conformity with the laws of the State, as declared by this court, in making such an assessment as would be in uniformity with the assessments of property in other counties. The [fol. 106] assessing officers followed neither direction, but made two separate valuations for taxation purposes, which was, according to our decision in the *Hays* case, *supra*, unauthorized by law. Are the taxpayers bound by such an assessment? They are bound by an assessment made in accordance with the adjudication of a court having jurisdiction in an action against the assessing officers, for the reason that they are held to be privies to the action as being represented by the assessing officers in a matter in which the taxpayers are necessarily interested. *Ashton v. Rochester*, 133 N. Y. 187, 105 Am. St. Rep. (note) 212; 2 Vanfleet on Former Adjudications, 1153. They are not bound by an assessment not authorized either by the judgment of the court or by the laws of the State. The assessing officers may be held to be in contempt of court for failure to make the assessment in accordance with the judgment of the court, but the taxpayers cannot be held to compliance with the judgment unless the assessment be made in accordance therewith; they are only bound by an assessment made in accordance with the judgment. The taxpayer cannot be held to pay until there has been a valid assessment of taxes in accordance with law, or unless there is other statutory authority for collecting the tax without a previous valid assessment. It is contended by counsel for plaintiff that if it be conceded that the assessment was not made in accordance with the direction of the Federal court judgment, the effect was merely to relieve the taxpayers from a portion of the tax which would have been imposed by a full valuation [fol. 107] assessment by omitting the full valuation from the taxes for State, municipal and school purposes, and that they cannot com-

plain of this reduction. Counsel rely on the decision of this court in the recent case of *Summers v. Brown*, 157 Ark. 509. That decision does not, however, have the application here that counsel contend for. In that case there had been a valid assessment for all purposes, and the clerk, following the erroneous direction of the equalization board and the county court, reduced the taxes to one-half of the amount originally assessed. We held that the reduction was void, but that the taxpayer could not complain and escape payment of the amount of taxes extended against his property. In the present case there has been no valid assessment, either under the direction of the Federal court judgment or the laws of the State, therefore the taxpayers were not bound by the illegal assessment.

It is further contended by counsel for the plaintiff that these actions were brought under the statute (Crawford & Moses Digest, Sec. 10204 et seq.) authorizing suits in equity to be brought against corporations for the collection of over-due taxes, and that there should be a recovery in accordance with the valuation directed by the Federal court judgment, even though it be found that the assessment was not in accordance with the judgment. The courts of the State are not bound to that extent by the judgments of the Federal court. Under the statute referred to, the courts are authorized and empowered to [fol. 108] adjudicate and enforce collection of delinquent taxes which are authorized by the laws of the State—not those merely directed by the judgment of another court.

Each of the defendants in these cases have offered to pay at the outset the amount due upon its property in accordance with the Constitution and laws of this State, and they cannot be compelled, under the statute referred to above, to pay more than that merely because there has been an adjudication of another court. The chancery court awarded the plaintiff a decree against each of the defendants for those amounts.

Courts of equity, under the statute referred to, are authorized to enforce only the taxation laws of this State as interpreted by the Supreme Court of this State. The Federal court did not determine the amount that each taxpayer was to pay, but adjudged that there should be an assessment by the assessing officers at a full valuation, and, as before stated, this was not done.

Finally, it is contended that the court erred in refusing to adjudge a penalty, interest and costs on the defendants on account of their failure to make their tender good, but that contention is not sound for the reason that the tender was refused. Each of the defendants pleaded a tender of the proper amount, which was, in effect, a continuing offer to pay that amount.

Before closing the discussion, reference should be made to the fact that the State Tax Commission did not, in fact, change its assessment [fol. 109] of railroad property for the year 1921 and raise it to a full-value assessment. There was correspondence between the assessor and the Secretary of the Tax Commission, in which the latter expressed his individual opinion as to what the assessor should do, but there does not appear in the record any order of the Tax Com-

mission raising the assessment on railroad property to full valuation. This affords additional reason why there can be no recovery of taxes for the year 1921 on a full valuation basis. It is unimportant, however, since we hold, for the reasons hereinbefore stated, that there can be no recovery for the taxes for either year on a full valuation basis.

The decree is therefore affirmed.

Hart and Humphreys, J. J. concur.

[fol. 110] IN SUPREME COURT OF ARKANSAS, NOVEMBER TERM, 1923,
FEBRUARY 25, 1924

(Caption omitted)

ORDER EXTENDING TIME

The appellant having filed a petition for rehearing within the time allowed by law, and now praying for time in which to file a supporting brief, the said petition is passed by the Court one week for such briefs and response.

IN SUPREME COURT OF ARKANSAS, NOVEMBER TERM, 1923,
MARCH 3, 1924

(Caption omitted)

SUBMISSION OF CAUSE ON PETITION FOR REHEARING

The petition for rehearing filed in this cause being called, is now submitted, with the briefs filed and response thereto, and is by the Court taken under advisement.

[fol. 111] IN SUPREME COURT OF ARKANSAS

[Title omitted]

MOTION FOR REHEARING AND ORDER OVERRULING SAME

Appellant prays that the court grant rehearing in the above entitled cause for the following reasons:

(1). The court erred in holding that the assessment was not made in compliance with the Federal mandamus because it was not doubled for all taxing purposes as well as for county general tax purposes, because:

(a). The court should have considered the pleadings as well as the face of the judgment in arriving at the interpretation of the Federal mandamus.

(b). The order of mandamus should not have been interpreted by this court in such a manner as to make it violative of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution which the order of mandamus will do if there be a 100% assessment for State purposes in Craighead County with a 50% assessment for State purposes in the other counties of the State.

(c). The Federal order of mandamus was rendered under interpretation of equality and uniformity laws of the State Constitution which is directly opposite to the interpretation of the same clause given by this court. Notwithstanding the fact that the Federal mandamus was issued on a wholly opposite view of the construction [fol. 112] of the State constitution this court has in this case applied the State view rather than the Federal view in determining the construction and operation of the mandamus. In thus refusing to follow the Federal view of the interpretation of the State Constitution in construing the Federal order of mandamus this court has failed to give full faith, credit and effect to the Federal order of mandamus. Full faith and credit required that the Federal interpretation of the the State Constitution should be applied not only in rendering the mandamus but in construing its operation and effect.

(d). The interpretation of the Federal mandamus as made by this court violates Section 18 of Article 2 of the Arkansas Constitution prohibiting the granting to any citizen or class of citizens privileges or immunities on the same terms which shall not equally belong to all citizens.

(e). Appellant also reaffirms the authorities cited and arguments made in the original brief for appellant on the proposition that the assessment should be doubled for county purposes only.

(2). The court erred in holding that the Corporation Overdue Tax Law is not applicable to assessments made by assessing authorities on account of Federal mandamus and the reasoning of the court that this statute applies only to taxes authorized by the laws of the State as construed by the Federal court is violative of the Federal Constitution in that it denies full faith, credit and effect to the Federal Mandamus judgment. The denial by a State court of a State remedy in the enforcement of a Federal judgment merely because that judgment is of Federal origin constitutes a denial in contravention of the Constitution of the United States of full faith and credit clause therein and of the due force and effect required by the terms of that Constitution to be given by State courts to Federal judgments when [fol. 113] involved in actions pending in the State courts.

Wherefore appellant prays that this cause be reheard, that the court declare that the assessment as made was valid or in any event that the Corporation Overdue Tax law is applicable here with the result that the errors alleged to have been made in the assessment may be corrected in the manner pointed out by that act in this suit and that the cause be remanded to the chancery court with directions to have the assessments so made.

Respectfully submitted, J. S. Utley, Attorney General of the State of Arkansas, and A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

Certificate of Counsel

We, A. P. Patton and Horace Sloan, special counsel for appellant in the above entitled cause, do hereby certify that we have carefully read and considered the opinion of the court in the above entitled cause and that it is our opinion and judgment that the grounds alleged in the foregoing motion for rehearing are meritorious.

A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

Filed Feby. 23, 1924. W. P. Sadler, Clerk.

[fol. 114] NOVEMBER TERM, 1923, MARCH 10, 1924

(Caption omitted)

Being fully advised, the petition for rehearing filed in this cause, is by the Court overruled.

[fol. 115] IN SUPREME COURT OF ARKANSAS

CLERK'S CERTIFICATE

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings, as called for in the stipulation hereto attached and made a part hereof, in the case of State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Appellant, vs. St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company, Appellees, and also of the opinion of the court rendered therein as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this May 23, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fol. 116]

IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 10, 1924

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Arkansas, in the above entitled matter there is manifest error in this, to-wit:

First. The Supreme Court of Arkansas has erred in upholding the validity of a statute of the State of Arkansas which statute, as construed by the Arkansas Supreme Court contravenes the Federal Constitution, that is to say: The Supreme Court of Arkansas has construed the provisions of Sections 10204-10214 of Crawford & Moses' Digest of the Statutes of Arkansas [The Corporation Overdue Tax Law] to provide a remedy only for the collection of taxes approved by judgments of the courts of the State of Arkansas and has held that said statute does not furnish a remedy for the collection of overdue taxes extended on the tax-books of the county pursuant to an order of mandamus rendered by a Federal District Court; and that said statute, when so construed, contravenes the Constitution of [fol. 117] the United States in that it denies to the judgment of a Federal District Court the same force and effect, the same construction and operation, and the same methods of enforcement that would be granted by the State Supreme Court to a judgment rendered by a court of the State of Arkansas; and both in so construing said statute and in so upholding the validity of said statute as so construed, the Supreme Court of Arkansas has failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus, all in contravention of the judicial power granted to the Federal Courts by Article LLL of the Constitution of the United States and the Acts of Congress enacted pursuant thereto and in further contravention of clause two of Article VI and of Section 1 of Article IV of the Constitution of the United States.

Second. In this case was drawn in question the validity of an authority exercised under the United States, and the decision of the Arkansas Supreme Court was against the validity of said authority in that the said Supreme Court of Arkansas held that a judgment in mandamus rendered by a United States District Court ordering the assessment of property for taxation at full value could not form the basis or foundation for a suit to collect overdue taxes filed under the provisions of Sections 10204-10214 of Crawford & Moses' Digest of the Statutes of Arkansas, the said State Supreme Court holding that said statutes so providing for the collection of overdue taxes could be employed to collect only taxes approved by the courts of the State and not taxes ordered to be assessed or levied by a United States District Court. In so construing said statute and in so refusing to give the same force and validity to a Federal judgment that it would have given to a judgment rendered by a court of the

State of Arkansas, the Supreme Court of Arkansas has failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus, in contravention of the judicial power granted to Federal courts by Articles III of the Constitution of the United States, and the acts of Congress enacted pursuant thereto and in further contravention of Clause 2 of Article VI and of Section 1 of Article IV, of the Constitution of the United States.

[fol. 118] Third. The court erred in holding and adjudging that the proper interpretation, scope, extent, operation and effect of the Federal mandamus involved herein was to require that the assessment for taxation of taxable property in Craighead County should be made by the assessing officials at full value in money not only for the purpose of county general taxation but also for the purpose of State, school district and municipal corporation property taxation, and thereby failed and refused to give due force and effect and full faith and credit to the Federal judgment in mandamus in contravention of the judicial power granted to Federal Courts by Article III of the Federal Constitution and the Acts of Congress enacted pursuant thereto in "controversies between citizens of different States," and in further contravention of clause 2 of Article VI of the Federal Constitution, and of Section 1 of Article IV of the Federal Constitution, for the following reasons:

(1) Because the proper construction of the Federal mandamus as stated by the judge rendering it, was that it required a full value assessment for county general purposes only.

(1a) Because the Supreme Court of Arkansas erred in not construing the Federal Mandamus according to the Federal interpretation of the Arkansas Constitution and statutes under which the mandamus was, in fact, rendered. On the other hand, the Supreme Court of Arkansas construed the Federal mandamus according to its interpretation of its own decisions under which such a mandamus could never have ordered in the first place.

[fol. 119] (2) Because, in arriving at such interpretation, the Supreme Court of Arkansas considered only the face of the judgment when it should also have considered the pleadings upon which the mandamus judgment was based. The pleadings show that a full value assessment for county general purposes only was the only assessment involved, and that only one of which the Federal Court issuing the mandamus order had any jurisdiction. Under the pleadings any attempt by the Federal Court to make an order with respect to the valuation of property for the purpose of imposing State, school district and municipal corporation property taxes would have been *coram non judice* and void.

(3) Because the State Supreme Court construction of the Federal mandamus makes that mandamus deny to persons in the jurisdiction of the State the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution in that within the limits of the same taxing district, viz: the State, the assessment

of property for taxation for State purposes in Craighead County would be at full value of the property assessed, whereas the same assessment for the same purpose in the other counties of the State would be made on a basis of fifty per centum of the full value of the property assessed, when that mandamus, as construed by the Federal judge rendering it and as acted upon by the State assessing authorities, did not have such effect.

Fourth. The court erred, even assuming that its interpretation of the Federal mandamus was correct, in adjudging and holding that the effect of that interpretation is to render void and uncollectible the assessment of property for taxation upon which the taxes herein sued for are based, and thereby failed and refused to give the due and proper force and effect and full faith and credit to the Federal judgment in mandamus in contravention of the judicial [fol. 120] power granted to Federal Courts by Article III of the Federal Constitution and the Acts of Congress enacted pursuant thereto in "controversies between citizens of different States," and in further contravention of clause 2 of Article VI of the Federal Constitution, and of Section 1 of Article IV of the Federal Constitution, for the following reasons:

(1) The error, if any, in the practical application of the mandamus, in making a full value assessment for county general purposes and an assessment at fifty per centum of true value for State, school district and municipal corporation taxes, was an error favorable to all taxpayers, including the railroads sued here. No taxpayer, including the defendants in error, was, therefore, in a position to complain or to raise an objection because they were not discriminated against or adversely affected.

(2) The error, if any, would affect the assessments for State, school district and municipal corporation taxes and not the assessment for county general purposes, which would have been placed at full value in any event.

(3) The error, if any, in such assessments for State, school district and municipal corporations, in failing to make the same at full value, was waived by the defendants in error through their action in paying said taxes without objection or complaint.

Wherefore plaintiff in error prays that writ of error from the Supreme Court of the United States to the Supreme Court of Arkansas and prays that the Supreme Court of the United States will reverse the said final order and judgment of the Supreme Court of the State of Arkansas, and that plaintiff in error be restored to all things which it has lost and further may have such other relief as [fol. 121] may be proper and just.

Dated this the 18 day of April A. D. 1924.

Respectfully submitted, J. S. Utley, Attorney General; A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

[File endorsement omitted.]

[fol. 122] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed May 10, 1924

To the Hon. Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas:

Your petitioner, State of Arkansas, Ex rel., J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, respectfully shows:

That in the above entitled cause the Supreme Court of Arkansas, (being the highest court in Arkansas in which decision in this suit could be had) has entered its final judgment herein against this petitioner; that this suit was brought by your petitioner under the provisions of the Corporation Overdue Tax Law of the State of Arkansas, [Crawford & Moses Digest of the Statutes of Arkansas, Sections 10204-10214] for the purpose of enforcing the collection of delinquent taxes due in Craighead County by the defendants in error respectively.

That said taxes were based on assessments for taxation under general property tax made by the assessing authorities of the county under and pursuant to an order of mandamus issued against them by the United States court for the Eastern District of Arkansas, Western Division.

[fol. 123] That the judgment of the Supreme Court of Arkansas was that the said Federal Court had the power to issue said writ of mandamus except insofar as a judgment in mandamus might be used as a basis for new assessment under the provisions of the Corporation Overdue Tax Laws of Arkansas, but that said assessment of property for taxation had not been made in compliance with the mandamus for the reason that the assessment also placed at full value for county general purposes only and not at full value for the purposes of the other taxing units of the State. In said cause it was contended by your petitioner that, if there was any defect in said assessment, it was the duty of the court to order new assessment made eliminating said defects under and by virtue of the provisions of said Corporation Overdue Tax Law. It was further contended by your petitioner that the proper interpretation and construction of the Federal mandamus was that it required a full value assessment for taxation for county general purposes only and not for State, municipal or school district taxes.

Your petitioner respectfully represents that in holding that the Federal court judgment could not constitute a basis for a new assessment under the provisions of the Corporation Overdue Tax Law there was a decision by this court against the validity of an authority exercised under the United States adverse to the claim asserted by your petitioner.

Your petitioner further respectfully represents that in construing the Federal order of mandamus to leave the question open for a decision by the State Supreme Court as to whether the assessment of property for taxation should have been made at full value for all purposes or for county general purposes only, the Arkansas Supreme Court misconstrued the interpretation and effect of the said mandamus and the Arkansas Supreme Court further erred in holding that the effect of its own interpretation of what was required under the Federal mandamus was to invalidate and render uncollectible the taxes herein sued for.

In this cause title, rights, privileges and immunities were claimed by your petitioner under the Constitution of the United States, the Statutes of the United States and under an authority exercised under the United States and the decision of the Supreme Court of Arkansas, was against the claim for such title, rights, privileges and immunities so specially set up by your petitioner under the Constitution and Statutes of the United States and under an authority exercised under the United States.

Your petitioner files herewith its assignment of errors, its prayer for reversal and its bond on writ of error and prays that a writ of error be allowed to the Supreme Court of the United States to review said judgment of the Supreme Court of Arkansas.

State of Arkansas ex Rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, by J. S. Utley, Attorney General; A. P. Patton, Horace Sloan, Special Counsel for Craighead County.

[File endorsement omitted.]

Let the writ of error issue upon execution of cost bond by the plaintiff in error to the defendants in error for the sum of \$500.00, such bond, when approved, the May 5, 1924.

E. A. McCulloch, Chief Justice of the Supreme Court of Arkansas.

[fols. 125 & 126] BOND ON WRIT OF ERROR FOR \$500.00—Approved and filed May 10, 1924; omitted in printing

[fol. 127]

IN SUPREME COURT OF ARKANSAS

[Title omitted]

WRIT OF ERROR—Filed May 10, 1924

The President of the United States of America to the Honorable the Judge of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings and also in the rendition of the Judgment of a plea which is in the said Supreme Court of the State of Arkansas before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had on the suit between State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, as appellants, and St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company, as appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in [fol. 128] favor of their validity; a manifest error hath happened to the great damage of the said State of Arkansas and the said Craighead County, Arkansas, as by its complaint appears; and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 10 day of May, the year of our Lord One Thousand Nine Hundred and Twenty-four.

Sid B. Redding, Clerk United States District Court for Western Division of Eastern District of Arkansas. H. H. Harrelson, D. C. (The Seal of the District Court, Western Division, East. Dist. Ark., U. S. A.)

Allowed May 10, 1924. E. A. McCulloch, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 129] STATE OF ARKANSAS, ss:

IN SUPREME COURT OF ARKANSAS

CERTIFICATE OF LODGMENT

I, W. P. Sadler, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 10, 1924, in the matter of State of Arkansas, Ex Rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, versus St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company,

1. The original bond of which a copy is herein set forth.
2. Copies of the writ of error, as herein set forth, one for each defendant, and one to file in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this May 23, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fol. 130] IN THE SUPREME COURT OF THE UNITED STATES

CITATION—In usual form, showing service on W. J. Orr; omitted in printing.

[fol. 131] IN SUPREME COURT OF ARKANSAS

RETURN TO WRIT OF ERROR

UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the city of Little Rock, this May 23, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

Costs of Suit

Chancery court costs.....32.20
Supreme Court "62.50

Costs pursuant to Writ of Error 37.50, Paid by plaintiff in error.

Endorsed on cover: File No. 30,369. Arkansas Supreme Court. Term No. 410. State of Arkansas, ex rel. J. S. Utley, Attorney General of the State of Arkansas, for the use and benefit of Craighead County, Arkansas, Plaintiff in Error, vs. St. Louis-San Francisco Railway Company and Missouri Pacific Railroad Company. Filed May 26, 1924. File No. 30,369.

(3827)